SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS,

vs.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

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[fol. 1]

UNITED STATES OF AMERICA

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Civil action no. 4480

JAMES SAILORS and LORETTA SAILORS; SEYMOUR KONING and MILDRED KONING; GRAZZI MULLAY and ROSALIE MULLAY; and THE BOARD OF EDUCATION OF THE CITY OF GRAND RAPIDS, a second class school district, Plaintiffs,

vs.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT and VICTOR WELLER, DEWEY JAARSMA, MARY I. KEELER, RUSSELL EMMONS and C. B. LEAVER, as members thereof, and THE KENTWOOD PUBLIC SCHOOLS, a school district of the fourth class, Defendants.

COMPLAINT—Filed February 15, 1963

The Plaintiffs say:

1. This action arises under the Fourteenth Amendment to the United States Constitution, and Sections 1981 and 1983 of Title 42 of the United States Code, as hereinafter more fully appears. Jurisdiction is conferred on this Court by 28 U.S.C. Sections 1331 and 1343, and the amount in controversy exceeds Ten Thousand Dollars ($10,000.00).

2. Prior to December 31, 1962, plaintiffs James Sailors, Loretta Sailors, Seymour Koning, Mildred Koning, Grazzi Mullay and Rosalie Mullay were resident-electors and free-

[File endorsement omitted]

holders of the Township of Paris, and school-electors of the Kentwood Public Schools, a school district, but were annexed on that date to the City of Grand Rapids pursuant to resolutions of the Board of Supervisors of the County [fol. 2] of Kent (See certified copies of resolutions of the Kent County Board of Supervisors dated December 6, 1961, and attached hereto as "Exhibits A and B") and a favorable vote of the electors of the areas annexed (See certified copy of report of County canvassers attached hereto as "Exhibit C") held on February 19, 1962.

3. In annexing to the City of Grand Rapids said individual plaintiffs were thereby annexed to the School District of the City of Grand Rapids, a school district of the second class, and said individual plaintiffs are electors of the City of Grand Rapids and school-electors of the school district of the City of Grand Rapids.

4. Defendant Kentwood Public Schools, a school district, did on the 1st day of January, 1963, adopt a resolution requesting The Board of Education of the County of Kent to summarily and without voter approval detach the areas so annexed as set forth in paragraph 2 and in "Exhibit C", including the areas in which the individual plaintiffs herein reside. (A copy of said resolution is attached hereto as "Exhibit D")

5. Thereafter and commencing on January 29, 1963, the individual defendants acting in their capacity as The Board of Education of the County of Kent accepted such resolution of defendant Kentwood Public Schools, a school district, and in pursuance of Act 269 of the Public Acts of 1955 as amended commenced to receive information in support thereof and have announced their intention to render a decision thereon on February 25, 1963; which will violate the individual plaintiffs' civil rights.

6. That Chapter 8, Part I of the School Code of 1955 as amended (specifically Section 15.3294 of Michigan Statutes Annotated; Section 340.294 of the Compiled Laws of 1948)

[fol. 3] and Chapter 5, Part II of the School Code as amended (being Section 15.3291 Michigan Statutes Annotated and Section 340.291 of Compiled Laws of 1948) are violative of the provisions of the 14th Amendment of the Constitution of the United States and the provisions of Sections 1981 and 1983 of Title 42 of the United States Code.

7. That Chapter 8, Part I of the School Code of 1955 (Michigan Statutes Annotated Section 15.3294; Section 340.294 of Compiled Laws of 1948) providing for the election of members of the County Board of Education is in direct violation of the Constitution of the United States and of Title 42, Sections 1981 and 1983 of the United States Code; that said Act provides for a unit system for the election of county School Board members which invidiously discriminates against the individual plaintiffs herein who are school-electors of plaintiff School District; that the unit vote which plaintiff School District has at the annual meeting does not bear a reasonable relation to its population; that as a result the plaintiff School District and the individuals herein who are school-electors thereof, are denied the equal protection of the law; that said invidious discrimination consists of the following:

(a) That under the provisions of said Act (15.3294 M.S.A.) each school district in the County of Kent (including primary and fourth class) has *one* vote irrespective of its size, population, valuation, school census or school membership; that in the County of Kent there were, on July 1, 1961, fifty-six school districts, each having one vote (See Section "H" page 4 of the last Annual Report of the Kent County Board of Education, dated June 30, 1962, and attached hereto as "Exhibit E"); that the total population of [fol. 4] the County of Kent is 363,187 and the population of the plaintiff School District is 201,777; that the plaintiff School District has 55% of the population of the total county but has only one vote in the election of County

School Board members who pass upon problems and finances, vital to the existence of plaintiff School District and to the individual plaintiffs who are residents of said district. (See certified copy of the official census attached hereto as "Exhibit F");

(b) That under the provisions of said Act (15.3244 Mich. Stat. Ann.) the vote of each primary, fourth class, third class, and second class school district is given equal weight in the election and selection of members of the Kent County Board of Education notwithstanding a great disparity in the populations of the several school districts, more particularly as follows:

That Ashley School District 6th fractional has a population of 145 people and one unit vote; Boyd School District No. 10, Alpine Township has a population of 191 and thereby has one unit vote; Dodge School District No. 3, Gaines Township has a population of 117 people entitling it to one unit vote; Hoag School District No. 8, Solen Township has a population of 111 people entitling it to one unit vote; Nelson Center School District No. 6, Nelson Township has a population of 99 people, thereby entitling it to one unit vote while the School District for the City of Grand Rapids has a population of 201,777 and has but one unit vote.

[fol. 5] (c) That plaintiff School District of which individual plaintiffs are freeholders and tax payers did, for the year July 1, 1960, to June 30, 1961, have a property valuation of $605,528,136.00 of a total county wide property valuation of $1,147,515,378.00 (See pp. 14-16 of "Exhibit E") or 52.77% of the total valuation for said county, but said School District had but one vote out of 56 school districts (July 31, 1961) in electing County School Board members who are vested with authority under the provisions of Chapter 5, Part II of the School Code of 1955 (Michigan Statutes Annotated Sections 15.3461 and 15.3465; Section 340.461-5 of Compiled Laws of 1948) to emasculate said school district;

(d) That on May 31, 1962, the total school census for the County of Kent was 154,665 of which the plaintiff School District, of which the individual plaintiffs are residents, had 76,302 (See page 17 of "Exhibit E") and as of that date the plaintiff School District had 49.3% of the total school census of the 52 school districts of the County in existence on that date, but under the provisions of Chapter 8, Part I, C.L. 340.291-340.294, M.S.A. 15.3291-15.3294 it had but 1/52 (viz. 1.92%) of the voting strength, as of May 31, 1962;

(e) That the plaintiff School District, of which the individual plaintiffs are residents and parents of school age children, has a myriad of problems unlike those of most of the primary and fourth class school districts (of which there were 49 as of September 29, 1961, see p. 20 "Exhibit E"); that their solution depends upon the understanding, sympathetic appreciation and knowledge of those who pass upon its fate, but that its representation on the Kent County Board of Education is determined by the unit votes of school districts having less than 200 students in their districts (See page 17 of "Exhibit E");

[fol. 6] (f) That the voting strength of the individual plaintiffs is in such contrast with that of the electors in districts having less than 200 students as to discriminate invidiously and dilute their right to express themselves at the ballot box (See "Exhibit G" an extract from "Exhibit E") and deprives them of an impartial tribunal in determining matters of great consequence.

8. That the transfer provisions of the School Code of 1955, Chapter 5, Part II (15.3461 Michigan Statutes Annotated; Section 340.461 of Compiled Laws of 1948) are invalid, void and unconstitutional as an illegal, improper and arbitrary delegation of legislative power to a subdivision of the State because no standard, guideline, or yardstick has been provided for it to follow; that said Board of Education of the County of Kent, through which the in-

dividual defendants render decisions, illegally constituted through and by the unit vote of a minority of population and valuation is invested with unlimited authority to transfer at will by whim and caprice valuable properties of the individual plaintiffs to another school district as long as it does not detach more than 10% of the taxable valuation of the individual plaintiffs' entire school district at one time.

9. That the transfer provisions of the School Code of 1955, Chapter 5, Part II (Section 15.3461 M.S.A.) are invalid and void and unconstitutional and are in violation of the due process clause of the 14th amendment because the State Legislature does not possess the power to force residents and property into adjoining municipalities and school districts without preserving to the residents and electors thereof the right to the ballot; that said individual plaintiffs joined plaintiff School District through their voting franchise; that the State of Michigan through its Legisla-
[fol. 7] ture does not have the unrestricted power to delegate to illegally constituted tribunals the right to reorganize, destroy, contract political and education districts through the exercise of their caprice.

10. That Chapter 8, Part I of the School Code of 1955 (Michigan Statutes Annotated 15.3294; Section 34.294 of the Compiled Laws of 1948) and more particularly the transfer provision of said School Code (Chapter 5, Part II; Section 15.3461 of Michigan Statutes Annotated; Section 340.461 of Compiled Laws of 1948) contain invalid delegations of legislative power, investing administrative officers with arbitrary power, in contravention of the provisions of due process and equal protection clauses of the Constitution of the United States as contained in the 14th Amendment thereof.

11. The transfer provisions of the School Code of 1955, Chapter 5, Part II are invalid, void and unconstitutional and in violation of the due process clause of the federal constitution in that no reasonable notice to interested

parties is required or provided for, and no provision is made for an opportunity for interested parties to be heard or offer evidence; no provision is made for cross-examination of adverse witnesses; no provision is made for witnesses to be sworn or for exhibits to be properly marked and identified; no provision of any kind is made for reasonable rules of procedure to guarantee interested parties a fair hearing; all of which denies the plaintiffs of their right to procedural due process of law.

12. Plaintiffs are without any adequate remedy at law. The individual defendants comprising the Board of Education of the County of Kent are expected to render a deci- [fol. 8] sion on or before the 25th of February, 1963, which will result in irreparable loss and damage to these plaintiffs and to local governmental units as follows:

(a) Taxing authorities will be thrown into utter confusion in their assessment and compilation of property taxes and citizens, including the individual plaintiffs, will be at a loss to know or comprehend which school taxes should be paid; and if the status quo is not preserved, large numbers of tax payers, including individual plaintiffs herein, will be forced and required to pay their taxes under protest.

(b) The tax collecting authorities of the City of Grand Rapids will be unable to determine whether they are required to collect taxes for plaintiff School District or defendant Kentwood School District unless the status quo is preserved.

(c) Individual plaintiffs have children attending schools at the present time, now within the plaintiff School District and under its control, who would be tossed back under the control of defendant Kentwood Public Schools, a school district, by an adverse decision of the individual defendants, members of the Board of Education of the County of Kent, and later back to the plaintiff School District when the merits of plaintiffs' claims have been fully heard.

(d) Plaintiff School District will not know whose duty it is to educate individual plaintiffs' children and numerous others, and will not know whether plaintiff School District is entitled to State aid and reimbursement for such children, and will not know whether it is or is not entitled to the use of and responsible for the educational facilities situated in the areas made subject to the demands of defendant Kentwood Public Schools.

[fol. 9] (e) The educational processes, facilities, teachers, and system is designed for the benefit of children who will be subjected to great confusion, chaos, instability, emotional strain and interference if they are transferred back and forth.

(f) That to permit the said individual defendant members of the Board of Education of the County of Kent to render its illegal and constitutionally invalid decision will result in an excessive tax burden being imposed upon the individual plaintiffs who reside and pay taxes in the areas sought to be transferred; that such tax burdens will be unconstitutional and in violation of the law and in deprivation of constitutional rights of the individual plaintiffs.

(g) That the *status quo* should be preserved permitting an orderly and objective review of the merits of plaintiffs' claims and assertions.

Wherefore, the plaintiffs pray:

I That the Board of Education of the County of Kent and the individual defendants, who are members thereof, be, under the provisions of Rule 65 of the Federal Rules of Civil Procedure, enjoined from:

(a) Assuming jurisdiction and authority of the question of detaching the areas referred to in "Exhibit D" from the School District of the City of Grand Rapids and attaching the same to the Kentwood Public Schools;

(b) Conducting any further hearings in connection with same, which began on January 29, 1963;

(c) From rendering a decision or making any order in connection with said transfer petition.

II That the defendant Kentwood Public Schools, a school district, be under the provisions of Rule 65 of the Federal Rules of Civil Procedure enjoined from:

[fol. 10] Pursuing its petition or request as contained in "Exhibit D".

III That the Court enter a declaratory judgment that the transfer provisions of the School Code of 1955, namely, Chapter 5, Part II, of said Act, are unconstitutional, invalid, void and a nullity, and that an injunction issue in accordance therewith enjoining the defendants from exercising any jurisdiction or authority to purport to act by virtue of said invalid and unconstitutional provisions.

IV That the Court enter a declaratory judgment that the provisions of Chapter 8, Part I of the School Code of 1955, and especially Section 294 thereof, are invalid and unconstitutional, and declare that the defendant the Board of Education of the County of Kent of which the individual defendants are members is unconstitutionally constituted, and to enter an injunction as follows:

(a) Enjoining the Board of Education of the County of Kent and the individual defendants, who are members thereof, from exercising any jurisdiction or authority whatever until the further order of this Court;

(b) Enjoining any subsequent election by virtue of such void, invalid and unconstitutional provisions;

(c) Enter a mandatory injunction requiring that in any election under a unit system each unit or school district be given and awarded a vote based upon its share of the population, school census or school membership, at any election for membership of defendant the Board of Education of the County of Kent;

(d) That the Board of Education of the County of Kent and the individual defendants, who are members thereof, and Kentwood Public Schools, a school district, be ordered to show cause at a time and place to be designated by the Court why they should not be enjoined and restrained from exercising jurisdiction or authority and from pursuing any further action in connection with the proposed transfers or in connection with any other of the powers and duties pre-
[fol. 11] scribed by the School Code of 1955 and during the pendency of this suit, or until the further order of this Court;

(e) That the plaintiffs have such other and further relief to which they may be entitled.

Dated this 12th day of February, A.D. 1963.

James R. Sailors; Loretta Sailors; Seymour Koning; Mildred Koning; Mr. Grazziano Mullay; Rosalie Mullay.

Joseph P. Van Blooys, President, The Board of Education of the City of Grand Rapids, a second class school district.

Dutchess, Mika, Miles, Meyers, Merdzinski & Snow, By Wendell A. Miles, Attorneys for Individual Plaintiffs. Of Counsel for The Board of Education of the City of Grand Rapids, a second class school district, 311 Waters Building, Grand Rapids 2, Michigan.

McDonald & Anderson, By Roger D. Anderson, Attorneys for The Board of Education of the City of Grand Rapids, a second class school district, Of Counsel for Individual Plaintiffs. 1107 Michigan National Bank Bldg., Grand Rapids 2, Michigan.

Duly sworn to by James Sailors, et al., jurat omitted in printing.

[fol. 12] *Duly sworn to by Joseph P. Van Blooys, jurat omitted in printing.*

[fol. 14] EXHIBIT "A" TO COMPLAINT

RESOLUTION BY SUPERVISOR DICKINSON:

WHEREAS, certain petitions have been addressed to the Board of Supervisors, Kent County, Michigan signed by the requisite number of qualified electors and freeholders residing in the City of Grand Rapids, and in the Township of Paris for the purpose of annexing to the City of Grand Rapids and detaching from the Township of Paris that territory, the detailed description of which is hereunto annexed, marked Exhibit "A", and made a part hereof, and said descriptions further appearing in detail on said petitions as filed with this Board, and said property being adjacent to the City Limits of the City of Grand Rapids, and

WHEREAS, it appears to this Board of Supervisors that all of said petitions are in due and proper form and conform in all respects with the State law concerning proceedings for annexation as set forth in Act 279 of the Public Acts of 1909, as amended, and

WHEREAS, it appears that said petitions have been filed with the Clerk of the Board of Supervisors more than thirty (30) days prior to the convening of the Board of Supervisors on the opening day of this meeting, and

WHEREAS, in conformance with Act 279 of the Public Acts of 1909, as amended, this Board of Supervisors has considered said petitions at this meeting of said Board held on Wednesday, December 6, 1961.

Now, Therefore, BE IT RESOLVED that the question of annexing the territory and area described in Exhibit "A" and detaching the same from the Township of Paris be [fol. 15] submitted to the qualified electors of the City of Grand Rapids and the Township of Paris at a special election to be held in said City and Township on Monday, February 19, 1962 between the hours of 7 o'clock A. M. and 8 o'clock P. M. (EST), and that the question to be submitted to the electors in the said City of Grand Rapids

and the said Township of Paris be set forth on the ballot at said election in substantially the following form:

"Breton Avenue Area Annexation Proposal

"Shall territory in the Township of Paris, Kent County, Michigan, popularly known as Breton Avenue Area, be annexed to the City of Grand Rapids, Kent County, Michigan?

"YES ( )
"NO ( )"

Be It Further Resolved that at the election where said question is voted upon, the election shall be conducted in such manner as to keep the votes of the qualified electors in the territory proposed to be annexed in separate boxes or upon separate voting machines from the boxes or voting machines containing the votes from the remaining portion of said Township.

Be It Further Resolved that the County Clerk shall, within three days after the adoption of this resolution, [fol. 16] transmit a certified copy of the above mentioned petition and of this resolution to the Township Clerk of Paris Township and the City Clerk of the City of Grand Rapids, and it shall thereupon be the duty of the City Clerk and the Township Clerk to give notice of the date and purpose of the election provided for by this resolution, in one or more newspapers published in the County of Kent at least once in each week for four (4) weeks preceding such election, and by posting a like notice in at least ten (10) public places in the City of Grand Rapids and the Township of Paris not less than ten (10) days prior to such election.

Be It Further Resolved that said election herein called shall be held and conducted pursuant to the statutes in such case made and provided, and if the results of said election shall be in favor of annexation of the territory described in Exhibit "A", then and in such event the County Clerk

shall provide for filing the results thereof in the office of the Secretary of State and shall furnish a copy of the petition and of every resolution, affidavit, or certificate necessarily following such petition, with the certificate of the Board of County Canvassers attached showing that the annexation requested in such petition has been approved by a majority of the qualified electors voting thereon in accordance with Act 279 of the Public Acts of 1909, as amended.

BE IT FURTHER RESOLVED that annexation of the area described in Exhibit "A" to the City of Grand Rapids, if accomplished, shall be effective as of Dec. 31, 1962 at 12:01 A. M. (EST).

BE IT FURTHER RESOLVED, that such annexation of said [fol. 17] above-described territory to the City of Grand Rapids, if accomplished, shall be complete on the effective date herein specified for all purposes save the one purpose of electing State Senators and members of the Michigan House of Representatives, as to which it shall have no effect whatsoever, and the territory so annexed shall remain in and be a part of the senatorial or representative district in which it is located at the time of such annexation.

BE IT FURTHER RESOLVED that the ballot be framed as it shall appear on the voting machines or ballots in such a manner as to clearly identify the area proposed to be annexed to the City of Grand Rapids and detached from the Township of Paris without using a full and complete legal description appearing in Exhibit "A" hereof, which area shall be identified substantially as follows:

BRETON AVENUE AREA

BE IT FURTHER RESOLVED that in each polling place a complete description of the area proposed to be annexed and a map thereof clearly indicating the area proposed to be annexed shall be prominently displayed.

STATE OF MICHIGAN,
COUNTY OF KENT,

I, JACK BRONKEMA, Clerk of the Circuit Court of said County of Kent and Clerk of the Kent County Board of Supervisors do hereby certify that the above and foregoing is a true and correct transcript of a resolution adopted by the Board of Supervisors at a meeting held December 6, 1961 now on record in the office of the Clerk of said County and Court, and of the whole of said original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at the City of Grand Rapids, in said county, this 31st day of January one thousand nine hundred and sixty-three

JACK BRONKEMA, Clerk.
By /s/ WILLIAM H. FITZSIMMONS, Deputy.

[Seal]

[fol. 18]

EXHIBIT "A" TO EXHIBIT "A"

BRETON AVE.

PETITION TO ANNEX TO THE CITY OF GRAND RAPIDS CERTAIN TERRITORY DESCRIBED HEREIN

To: THE BOARD OF SUPERVISORS OF KENT COUNTY

We, the undersigned residents of the County of Kent, do hereby represent and show as follows:

1. That we are qualified electors and freeholders in the district to be affected by this Petition to a number not less than 1% of the total population of the City of Grand Rapids and the Township of Paris.

2. That we make and file this Petition to annex to the City of Grand Rapids certain territory contiguous thereto and described as:

Part of Sections 16, 21, and 22 of Paris Township, Kent County, described as: Beginning 250 feet south of the east ¼ corner of *Section 16,* thence south on the east line of Section 16 and Section 21 to the North line of Maple Valley Gardens, a recorded Plat, thence east 50 feet to the east line of Breton Avenue, thence south to the east and west ¼ line of *Section 22,* thence east 263 feet, thence south 288.71 feet, thence northwesterly 98.4 feet to a point which is 270 feet south and 217.23 feet east of the west ¼ corner of Section 22, thence west 217.23 feet to the west line of Section 22, thence south to the SE corner of *Section 21,* thence west 426 feet, thence north 264 feet, thence west 165 feet, thence south 264 feet to the south line of Section 21, thence west to a point which is 330 feet east of the SW corner of the east ½ of the SE¼ of Section 21, thence north 264 feet, thence west 330 feet to the west line of the east ½ of the SE¼ of Section 21, thence north 171.6 feet, thence west 400 feet, thence south 435.6 feet to the south line of section 21, thence west to a point which is 165 feet east of the south ¼ corner of Section 21, thence north 200 feet, thence west 165 feet to the north and south ¼ line of Section 21, thence north to the center of Section 21, thence east to a point 200 feet west of the east ¼ corner of Section 21, thence north 100 feet, thence east to a point on the east line of the section 100 feet north of the east ¼ corner, thence north to a point 330.29 feet north of the east ¼ corner, thence N87°43'W 165 feet, thence northwesterly 526.9 feet to a point N87°43'W 400 feet from a point on the east section line which is 792.29 feet north of the east ¼ corner, thence north 132 feet, thence west to a point on the east ⅛ line of section 21 which is 132 feet south of the NW corner of the south ½ of the SE¼ of the NE¼

of Section 21, thence north on the east ⅛ line to the north line of the south ½ of the NE¼, thence west to the north and south ¼ line, thence north to the north ¼ corner of Section 21, thence east on the south line of *Section 16* to the SW corner of the SE¼ of the SE¼ of Section 16, thence north to the NW corner of the SE¼ of the SE¼ of Section 16, thence east to a point which is 825 feet west of the east line of Section 16, thence north parallel with the section line to a point which is 250 feet south of the east and west ¼ line of Section 16, thence east 825 feet to place of beginning.

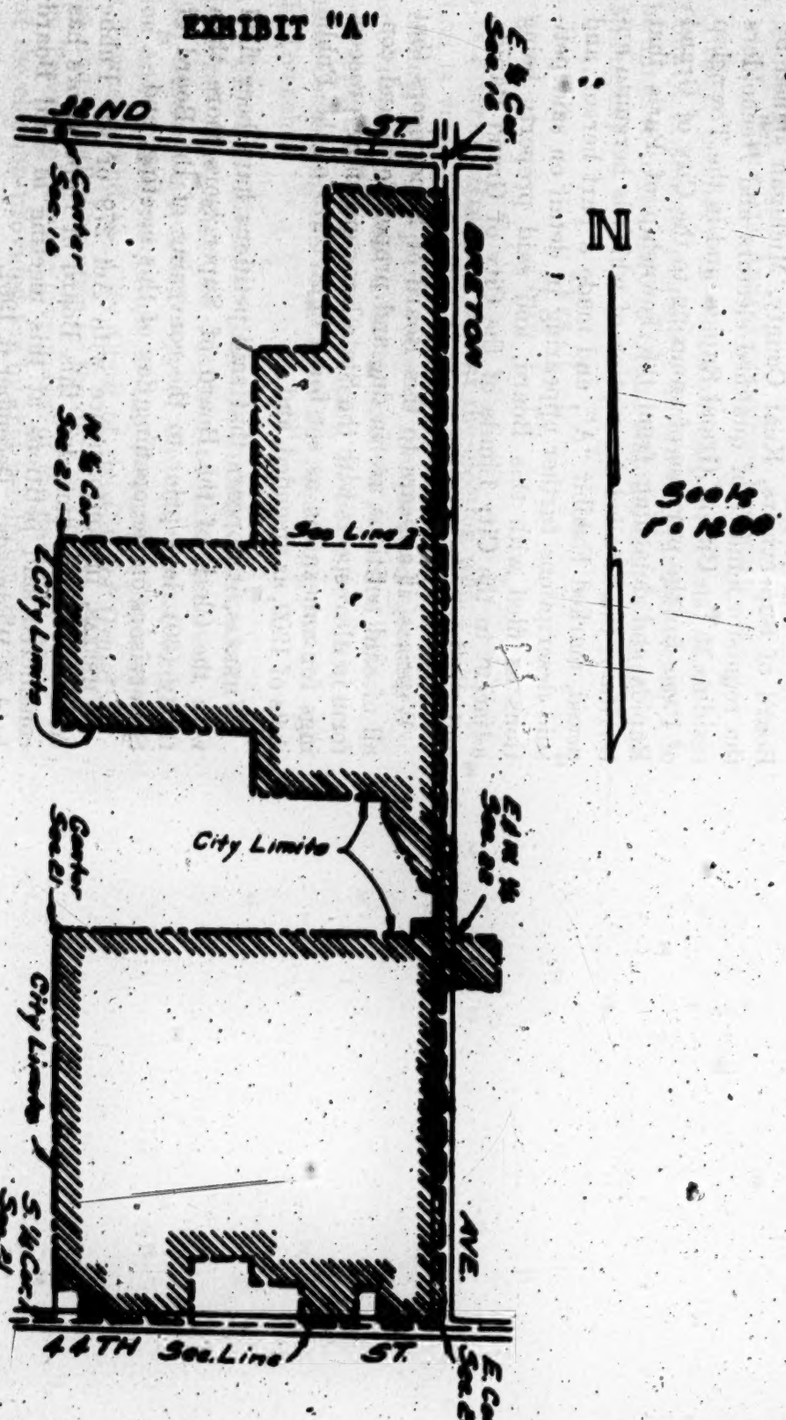
3. That, in addition to the signatures to which reference is made in paragraph 1 above, we submit the signatures of more than 35% of the total number of taxpayers assessed for real property taxes within the area proposed to be annexed.

4. That a map or drawing showing the territory to be annexed was attached to this Petition at the time each of the undersigned did subscribe same, and each of the undersigned acknowledges by his signature that he was shown and did inspect such map or drawing before signing this Petition.

WHEREFORE, we respectfully request that an election be held pursuant to Act 279 of 1909, as amended (Sec. 5.2085 Michigan Statutes Annotated, et seq.) to determine whether the above-described territory shall be annexed to the City of Grand Rapids.

30 39

EXHIBIT "A"



STATE OF MICHIGAN)
County of Kent) ss

John B. McCloskey deposes and says that he is a Registered Land Surveyor and that the accompanying map prepared by him shows the boundaries of the territory in Sections 16, 21, and 22 of Paris Township, Kent County, proposed by this Petition to be annexed to the City of Grand Rapids, a description thereof appearing in paragraph 2 of the within Petition for annexation and being incorporated by reference into this affidavit.

John B. McCloskey

Subscribed and sworn to before me
this 24th day of July 1961.

Notary Public, Kent County, Michigan

My commission expires April 19, 1965.

[fol. 19]

17

[fol. 20]

EXHIBIT "B" TO COMPLAINT

RESOLUTION BY SUPERVISOR DICKINSON:

WHEREAS, certain petitions have been addressed to the Board of Supervisors, Kent County, Michigan signed by the requisite number of qualified electors and freeholders residing in the City of Grand Rapids, and in the Township of Paris for the purpose of annexing to the City of Grand Rapids and detaching from the Township of Paris that territory, the detailed description of which is hereunto annexed, marked Exhibit "A", and made a part hereof, and said descriptions further appearing in detail on said petitions as filed with this Board, and said property being adjacent to the City Limits of the City of Grand Rapids, and

WHEREAS, it appears to this Board of Supervisors that all of said petitions are in due and proper form and conform in all respects with the State law concerning proceedings for annexation as set forth in Act 279 of the Public Acts of 1909, as amended, and

WHEREAS, it appears that said petitions have been filed with the Clerk of the Board of Supervisors more than thirty (30) days prior to the convening of the Board of Supervisors on the opening day of this meeting, and

WHEREAS, in conformance with Act 279 of the Public Acts of 1909, as amended, this Board of Supervisors has considered said petitions at this meeting of said Board held on Wednesday, December 6, 1961.

NOW, THEREFORE, BE IT RESOLVED that the question of annexing the territory and area described in Exhibit "A" and detaching the same from the Township of Paris be [fol. 21] submitted to the qualified electors of the City of Grand Rapids and the Township of Paris at a special election to be held in said City and Township on Monday, Feb-

ruary 19, 1962 between the hours of 7 o'clock A. M. and 8 o'clock P. M. (EST), and that the question to be submitted to the electors in the said City of Grand Rapids and the said Township of Paris be set forth on the ballot at said election in substantially the following form:

"KENDALL AREA ANNEXATION PROPOSAL

"Shall territory in the Township of Paris, Kent County, Michigan, popularly known as Kendall Area, be annexed to the City of Grand Rapids, Kent County, Michigan?

"YES ( )
"No ( )"

BE IT FURTHER RESOLVED that at the election where said question is voted upon, the election shall be conducted in such manner as to keep the votes of the qualified electors in the territory proposed to be annexed in separate boxes or upon separate voting machines from the boxes or voting machines containing the votes from the remaining portion of said Township.

BE IT FURTHER RESOLVED that the County Clerk shall, within three days after the adoption of this resolution, [fol. 22] transmit a certified copy of the above mentioned petition and of this resolution to the Township Clerk of Paris Township and the City Clerk of the City of Grand Rapids, and it shall thereupon be the duty of the City Clerk and the Township Clerk to give notice of the date and purpose of the election provided for by this resolution, in one or more newspapers published in the County of Kent at least once in each week for four (4) weeks preceding such election, and by posting a like notice in at least ten (10) public places in the City of Grand Rapids and the Township of Paris not less than ten (10) days prior to such election.

BE IT FURTHER RESOLVED that said election herein called shall be held and conducted pursuant to the statutes in such

case made and provided, and if the results of said election shall be in favor of annexation of the territory described in Exhibit "A", then and in such event the County Clerk shall provide for filing the results thereof in the office of the Secretary of State and shall furnish a copy of the petition and of every resolution, affidavit, or certificate necessarily following such petition, with the certificate of the Board of County Canvassers attached showing that the annexation requested in such petition has been approved by a majority of the qualified electors voting thereon in accordance with Act 279 of the Public Acts of 1909, as amended.

BE IT FURTHER RESOLVED that annexation of the area described in Exhibit "A" to the City of Grand Rapids, if accomplished, shall be effective as of Dec. 31, 1962 at 12:01 A. M. (EST).

BE IT FURTHER RESOLVED, that such annexation of said [fol. 23] above-described territory to the City of Grand Rapids, if accomplished, shall be complete on the effective date herein specified for all purposes save the one purpose of electing State Senators and members of the Michigan House of Representatives, as to which it shall have no effect whatsoever, and the territory so annexed shall remain in and be a part of the senatorial or representative district in which it is located at the time of such annexation.

BE IT FURTHER RESOLVED that the ballot be framed as it shall appear on the voting machines or ballots in such a manner as to clearly identify the area proposed to be annexed to the City of Grand Rapids and detached from the Township of Paris without using a full and complete legal description appearing in Exhibit "A" hereof, which area shall be identified substantially as follows:

KENDALL AREA

BE IT FURTHER RESOLVED that in each polling place a complete description of the area proposed to be annexed

and a map thereof clearly indicating the area proposed to be annexed shall be prominently displayed.

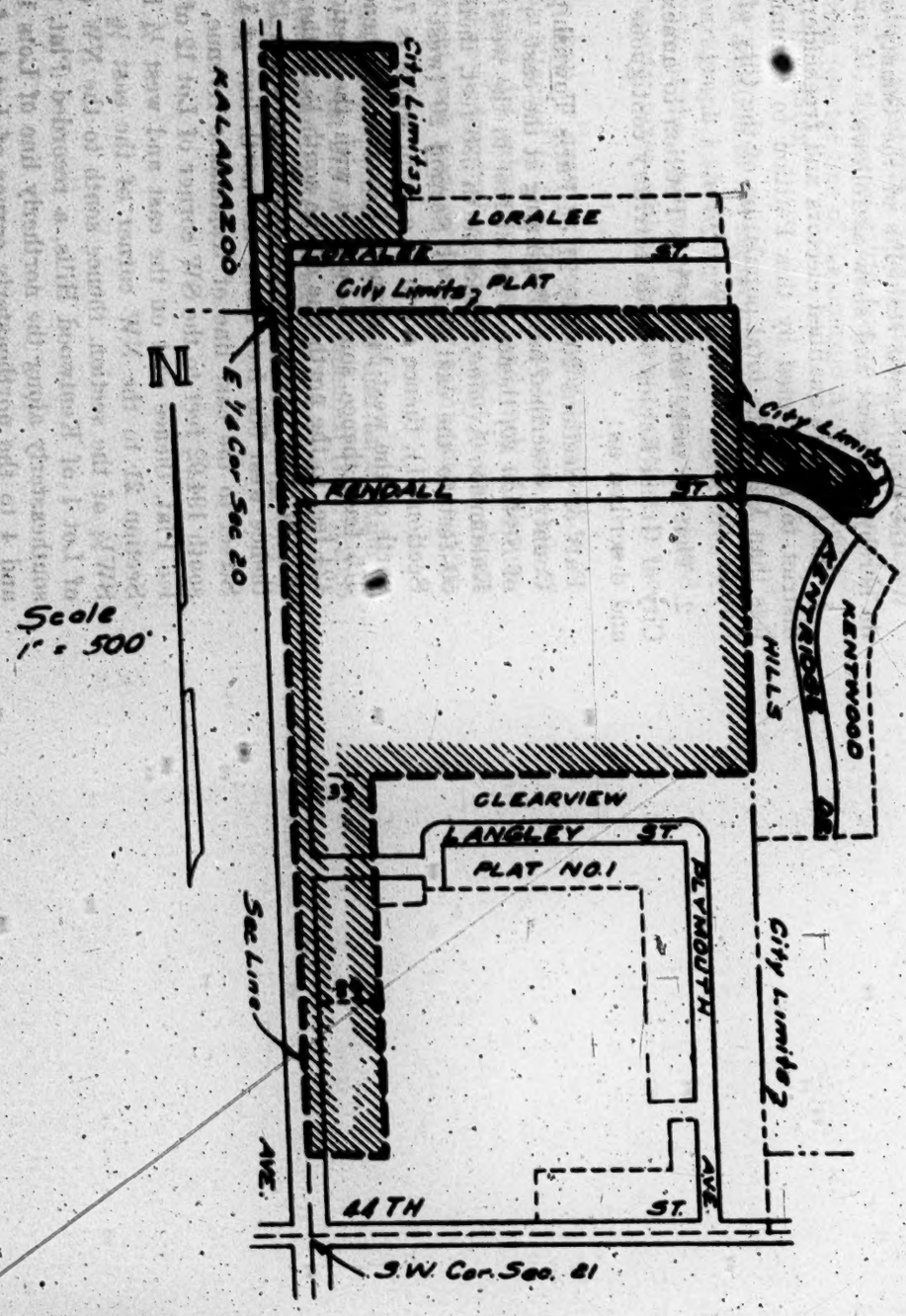
STATE OF MICHIGAN
County of Kent

I, JACK BRONKEMA, Clerk of the Circuit Court of said County of Kent and Clerk of the Kent County Board of Supervisors do hereby certify that the above and foregoing is a true and correct transcript of a resolution adopted by the Board of Supervisors at a meeting held December 6, 1961 now on record in the office of the Clerk of said County and Court, and of the whole of said original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at the City of Grand Rapids, in said county, this 31st day of January one thousand nine hundred and sixty-three.

JACK BRONKEMA, Clerk
By /s/ WILLIAM H. FITZSIMMONS Deputy

[Seal]



STATE OF MICHIGAN)
County of Kent) ss

John B. McCloskey deposes and says that he is a Registered Land Surveyor and that the accompanying map prepared by him shows the boundaries of the territory in Sections 20 and 21 of Paris Township, Kent County, proposed by this Petition to be annexed to the City of Grand Rapids, a description thereof appearing in paragraph 2 of the within Petition for annexation and being incorporated by reference into this affidavit.

John B. McCloskey

Subscribed and sworn to before me
this 24th day of July 1961.

Notary Public, Kent County, Michigan
My commission expires April 19, 1965.

[fol. 25]

PETITION TO ANNEX TO THE CITY OF GRAND RAPIDS CERTAIN TERRITORY DESCRIBED HEREIN

KENDALL

To: THE BOARD OF SUPERVISORS OF KENT COUNTY

We, the undersigned residents of the County of Kent, do hereby represent and show as follows:

1. That we are qualified electors and freeholders in the district to be affected by this Petition to a number not less than 1% of the total population of the City of Grand Rapids and the Township of Paris.

2. That we make and file this Petition to annex to the City of Grand Rapids certain territory contiguous thereto and described as:

Part of Sections 20 and 21 of Paris Township, Kent County, described as: Beginning at the east ¼ corner of *Section 20*, thence west 50 feet to the west line of Kalamazoo Avenue, thence north 330 feet, thence east 50 feet to the east line of Section 20 (west line of Section 21), thence north to a point which is 754 feet north of the west ¼ corner of *Section 21*, thence east 375 feet, thence south parallel with the section line 424 feet to the north line of the south ⅛ of the NW¼ of Section 21, thence east 5 feet, thence south 135 feet, thence west 330 feet along the north line of Loralee Street to the east line of Kalamazoo Avenue, thence south 194.92 feet to the SW corner of Lot 12 of Loralee Plat, thence east on the east and west ¼ line of Section 21 to the NW corner of the east ½ of the SW¼ of the section, thence south to the NW corner of Lot 1 of Kentwood Hills, a recorded Plat, thence southeasterly along the northerly line of Lots 1, 2, 3, and 4 to the northeasterly corner of Lot 4 of Kentwood Hills, thence southwesterly 113.4 feet to the

southeasterly corner of Lot 4, thence northwesterly along the southerly line of Lots 4, 3, 2 and 1 to the SW corner of Lot 1, thence south on the west 1/8 line to the NE corner of Clearview Plat No. 1, thence west along the north line of said Plat to the NE corner of Lot 33, thence south to the SE corner of Lot 89, thence continuing south parallel with the west line of the Section to a point 225.7 feet north of the south line of Section 21, thence west 210 feet to the west line of the Section (center line of Kalamazoo Avenue), thence north to beginning.

3. That, in addition to the signatures to which reference is made in paragraph 1 above, we submit the signatures of more than 35% of the total number of taxpayers assessed for real property taxes within the area proposed to be annexed.

4. That a map or drawing showing the territory to be annexed was attached to this Petition at the time each of the undersigned did subscribe same, and each of the undersigned acknowledges by his signature that he was shown and did inspect such map or drawing before signing this Petition.

WHEREFORE, we respectfully request that an election be held pursuant to Act 279 of 1909, as amended (Sec. 5.2085 Michigan Statutes Annotated, et seq.) to determine whether the above-described territory shall be annexed to the City of Grand Rapids.

PROPOSAL NO. 2 (TOWNSHIP OF Paris - Breton Ave. Area)

The following is the result of the votes cast on the matter of annexation of a portion of the Township of Paris to the City of Grand Rapids at the Special Election held February 19, 1962 in those areas in Kent County, Michigan.

Proposal NO. 1 - Breton Ave. Area

The total number of votes cast for and against annexation of a portion of Paris Township to the City of Grand Rapids was Twenty-three thousand and forty-one 23,041

For Annexation Seventeen thousand seven hundred and forty-two 17,742

Against Annexation Five thousand two hundred and ninety-nine 5,299

Total 23,041

and they were given for the following areas:

The City of Grand Rapids received Twenty-two thousand three hundred and thirteen 22,313

For Annexation Seventeen thousand six hundred and forty-three 17,643

Against Annexation Four thousand six hundred and seventy 4,670

Total 22,313

The affected area in the Township of Paris received Seven 7

For Annexation Seven 7

Against Annexation 0

Total 7

The Township of Paris outside of the affected area received Seven hundred and twenty-one 721

For Annexation Ninety-two 92

Against Annexation Six hundred and Twenty-nine 629

Total 721

STATE OF MICHIGAN
COUNTY OF KENT } ss.

WE DO HEREBY CERTIFY, That the foregoing is a correct statement of the votes given in the City of Grand Rapids, Michigan and the Township of Paris in the matter of the proposed annexation of a portion of Paris Township — (Breton Ave. Area) to the city of Grand Rapids, Michigan at the Special Election held on February 19, 1962.

IN WITNESS WHEREOF, We have hereunto set our hands and caused to be affixed the seal of the Circuit Court for the County of Kent this 21st. day of February in the year one thousand nine hundred sixty two.

/S/ William Rupp
/S/ Theodore H. Williams
/S/ Mrs. Phyllis J. Harder
Board of Election Canvassers

ATTEST:

/S/ Jack Bronkema
Clerk of Board of County Canvassers

PROPOSAL NO. 2 (TOWNSHIP OF Paris - Kendall Area)

The following is the result of the votes cast on the matter of annexation of a portion of the Township of Paris to the City of Grand Rapids at the Special Election held February 19, 1962 in those areas in Kent County, Michigan.

Proposal NO. 2 - Kendall Area

The total number of votes cast for and against annexation of a portion of Paris Township to the City of Grand Rapids was

Twenty-two thousand seven hundred and forty-eight	22,748
For Annexation Seventeen thousand four hundred and nineteen	17,419
Against Annexation Five thousand three hundred and twenty-nine	5,329
Total	22,748

and they were given for the following areas:

The City of Grand Rapids received

Twenty-two thousand and twenty-five	22,025
For Annexation Seventeen thousand three hundred and twenty-eight	17,328
Against Annexation Four thousand six hundred and ninety-seven	4,697
Total	22,025

The affected area in the Township of Paris

received Twenty-six	26
For Annexation Sixteen	16
Against Annexation Ten	10
Total	26

The Township of Paris outside of the affected area

received Six hundred and ninety-seven	697
For Annexation Seventy-five	75
Against Annexation Six hundred and twenty-two	622
Total	697

STATE OF MICHIGAN }
COUNTY OF KENT } ss.

WE DO HEREBY CERTIFY, That the foregoing is a correct statement of the votes given in the City of Grand Rapids, Michigan and the Township of Paris in the matter of the proposed annexation of a portion of Paris Township — (Kendall Area) to the city of Grand Rapids, Michigan at the Special Election held on February 19, 1962.

IN WITNESS WHEREOF, We have hereunto set our hands and caused to be affixed the seal of the Circuit Court for the County of Kent this 21st. day of February in the year one thousand nine hundred sixty-two.

/S/ William Rupp
/S/ Theodore H. Williams
/S/ Mrs. Phyllis J. Harder
Board of Election Canvassers

ATTEST:

/S/ Jack Bronkema
Clerk of Board of County Canvassers

[fol. 27]

PROPOSAL NO.5 (TOWNSHIP OF Paris - Fuller-14th. Area)

The following is the result of the votes cast on the matter of annexation of a portion of the Township of Paris to the City of Grand Rapids at the Special Election held February 19, 1962 in those areas in Kent County, Michigan.

Proposal NO. 5 - Fuller-14th. Area

The total number of votes cast for and against annexation of a portion of Paris Township to the City of Grand Rapids was

Twenty-two thousand seven hundred and twenty-seven	22,727
For Annexation Seventeen Thousand five hundred and thirty-nine	17,539
Against Annexation Five thousand one hundred and eighty-eight	5,188
Total	22,727

and they were given for the following areas:

The City of Grand Rapids received

Twenty-two thousand	22,000
For Annexation Seventeen thousand four hundred and forty-five	17,445
Against Annexation Four thousand five hundred and fifty-five	4,555
Total	22,000

The affected area in the Township of Paris

received Twelve	12
For Annexation Seven	7
Against Annexation Five	5
Total	12

The Township of Paris outside of the affected area

received Seven hundred and fifteen	715
For Annexation Eighty-seven	87
Against Annexation Six hundred and twenty-eight	628
Total	715

STATE OF MICHIGAN
COUNTY OF KENT } ss.

WE DO HEREBY CERTIFY, That the foregoing is a correct statement of the votes given in the City of Grand Rapids, Michigan and the Township of Paris in the matter of the proposed annexation of a portion of Paris Township — (Fuller-14th. Area) to the city of Grand Rapids, Michigan at the Special Election held on February 19, 1962.

IN WITNESS WHEREOF, We have hereunto set our hands and caused to be affixed the seal of the Circuit Court for the County of Kent this 21st day of February in the year one thousand nine hundred sixty two.

/S/ William Rupp
/S/ Theodore H. Williams
/S/ Mrs. Phyllis J. Harder
Board of Election Canvassers

ATTEST:

/S/ Jack Bronkema
Clerk of Board of County Canvassers

[fol. 28]

[fol. 29]

EXHIBIT "D" TO COMPLAINT

KENTWOOD PUBLIC SCHOOLS, KENT COUNTY, MICHIGAN

STATE OF MICHIGAN)
) ss
COUNTY OF KENT)

R. CLARE CHRISTENSEN, Being first duly sworn, says that he is the duly elected, qualified and acting secretary of the board of education of Kentwood Public Schools, Kent County, Michigan, a fourth class school district, and that the attached is a true copy of extracts from the minutes of a special meeting of the board of education of said school district held Tuesday, January 1, 1963 containing 2 resolutions requesting the county board of education of the County of Kent, State of Michigan to detach certain territory described therein from the School District of the City of Grand Rapids, a second class school district, and attach the same to Kentwood Public Schools, Kent County, Michigan, under the provisions of chapter 5, part 2 of The school code of 1955, as amended.

/s/ R. CLARE CHRISTENSEN
R. Clare Christensen

Subscribed and sworn to before me
this 1st day of January, A. D. 1963

/s/ ELIZABETH ALTROCK
Notary Public, Kent County, Michigan
My commission expires: Oct. 30, 1964

STATE OF MICHIGAN
COUNTY OF KENT

I, JACK BRONKEMA, Clerk of the Circuit of said County of Kent and Clerk of the Kent County Board of Supervisors do hereby certify that the above and foregoing is

a true and correct transcript of the report of the Board of Election Canvassers of the special Election held Feb. 19, 1962 re three annexation proposals (Breton Area, Kendall Area and Fuller-44th St. Area) now on record in the office of the Clerk of said County and Court, and of the whole of said original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at the City of Grand Rapids, in said county, this 31st day of January one thousand nine hundred and sixty-three.

JACK BRONKEMA, Clerk
By /s/ WILLIAM H. FITZSIMMONS, Deputy

[Seal]

[fol. 30]

KENTWOOD PUBLIC SCHOOLS, KENT COUNTY, MICHIGAN

(A Fourth Class School District)

EXTRACTS FROM THE MINUTES OF A SPECIAL MEETING OF THE BOARD OF EDUCATION HELD TUESDAY, JANUARY 1, 1963

A special meeting of the board of education of Kentwood Public Schools, Kent County, Michigan, a fourth class school district, was held in the library of the high school building in said school district on Tuesday, January 1, 1963 at 3:30 o'clock P.M., eastern standard time, pursuant to the call of the president.

Present: Members Clifford R. Barnes, president; R. Clare Christensen, secretary; Charles D. Grooters, treasurer; Robert E. DeZwaan and Gilbert E. Bowie, constituting the entire membership of the board of education.

Mr. Luther M. Barrett, superintendent of schools, was also present.

The president reported he had been advised by Paul O. Strawhecker of Strawhecker and McCargar, attorneys for the board of education, that:

1. December 19, 1962 the Honorable Fred N. Searl, Circuit Judge, acting Judge of the Superior Court of Grand Rapids, filed an opinion in the case of Ernest J. Schmidt, et al, vs The City of Grand Rapids, et al, pending in the Superior Court of Grand Rapids, No. 6267, holding that § 143 of The school code of 1955 is a valid exercise of the legislative power and that by its operation the Breton Avenue, Kendall and Fuller-44th Street areas, now a part of the territory of this school district, will become a part of the School District of the City of Grand Rapids on December 31, 1962 and on December 26, 1962 said judge entered an order denying the relief prayed by the plaintiffs and dismissing the petition. As this school district was not granted permission to intervene as a party plaintiff in that case, on its application therefor, this school district, through this board of education, cannot participate with the plaintiffs therein in determining the future course of that litigation and in particular, cannot participate in the decision of the plaintiffs therein as to whether to file an application in the Supreme Court of Michigan for leave to appeal said order entered December 26, 1962.

[fol. 31] 2. The Supreme Court of Michigan December 5, 1962 denied the application of the Board of Education of the City of Flint for leave to appeal from an order of the State Board of Education dated September 24, 1962 detaching certain territory from the School District of the City of Flint and attaching it to Carman School District in Genesee County. The effect of this denial is that chapter 5, part 2 of The school code of 1955 relating to the transfer of territory between districts is applicable to and governs school districts of the second class.

3. The regular session of the 1962 Michigan 71st Legislature adjourned sine die December 27, 1962 and Act 177 of the Public Acts of Michigan of 1962 will become effective March 28, 1963—90 days after final adjournment.

After considering the effect of the loss of the Breton Avenue, Kendall and Fuller-44th Street areas and the

Alexander Hamilton Elementary School located in the Breton area by this school district by reason of the annexation thereof to the School District of the City of Grand Rapids December 31, 1962 at 12:01 a.m. (EST) and the educational needs of the children of school age resident in this school district, Member DeZwaan, supported by Member Grooters, moved the adoption of the following preambles and resolution:

WHEREAS, At special elections held February 19, 1962 under the Home Rule Act in the City of Grand Rapids and Paris Township, Kent County, Michigan, the electors thereof approved the annexation of certain territory in said Paris Township, within the boundaries of this school district, commonly known as the Breton Avenue, Kendall and Fuller-44th Street areas, which are hereinafter more particularly described as Parcels Nos. 1, 2 and 3, respectively, to said City of Grand Rapids, effective as of December 31, 1962 at 12:01 a.m. (EST); and

WHEREAS, Under the provisions of § 143 of The school code of 1955, such territory by such annexation became a part of the School District of the City of Grand Rapids as of December 31, 1962 at 12:01 a.m. (EST); and

WHEREAS, 9 previous detachments of territory from this school district with a 1962 state equalized valuation of $10,935,523 have reduced the per capita valuation of this school district from $14,350 in 1960 to $11,151 in 1962 or 22.29%; and

[fol. 32] WHEREAS, Said Breton Avenue, Kendall and Fuller-44th Street areas have a 1962 state equalized valuation of $4,313,404 the loss of which has reduced the per capita valuation of this school district to $9,738 or a loss of 32.14% since 1960 and has caused this school district to be a hardship school district under the 1962 state aid formula; and

WHEREAS, Said Alexander Hamilton School is located in said Breton Avenue area and was taken from this school district December 31, 1962 at 12:01 a.m. (EST) by the School District of the City of Grand Rapids by reason of the annexation of said area; and

WHEREAS, As of December 31, 1962 there were only 21 membership children resident in said Breton Avenue, Kendall and Fuller-44th Street areas, 16 of whom were in attendance at Alexander Hamilton Elementary School and 5 of whom were in attendance in the high school of this school district; and

WHEREAS, Said Alexander Hamilton School is a modern 14-room elementary school and the loss thereof has deprived 235 membership children of this school district of adequate classrooms and educational facilities; and

WHEREAS, The annexations of such territory have taken from this school district a per capita valuation of $205,400 without means on the part of this school district to adequately house and educate such 235 membership children:

NOW, THEREFORE, IT IS RESOLVED, That:

1. This board of education does hereby request the county board of education of the County of Kent, State of Michigan to detach the following described 3 parcels of territory, commonly known as the Breton Avenue, Kendall and Fuller-44th Street areas, from the Board of Education of the City of Grand Rapids, a second class school district, known as the School District of the City of Grand Rapids, and attach it to this school district, pursuant to the provisions of chapter 5, part 2 of The school code of 1955, as amended; to-wit:

[fol. 33] PARCEL No. 1

Part of Sections 16, 21, and 22 of Paris Township, Kent County, Michigan, described as: Beginning 250 feet south

of the east ¼ corner of *Section 16*, thence south on the east line of Section 16 and Section 21 to the North line of Maple Valley Gardens, a recorded Plat, thence east 50 feet to the east line of Breton Avenue, thence south to the east and west ¼ line of *Section 22*, thence east 263 feet, thence south 288.71 feet, thence northwesterly 98.4 feet to a point which is 270 feet south and 217.23 feet east of the west ¼ corner of Section 22, thence west 217.23 feet to the west line of Section 22, thence south to the SE corner of *Section 21*, thence west 426 feet, thence north 264 feet, thence west 165 feet, thence south 264 feet to the south line of Section 21, thence west to a point which is 330 feet east of the SW corner of the east ½ of the SE ¼ of Section 21, thence north 264 feet, thence west 330 feet to the west line of the east ½ of the SE¼ of Section 21, thence north 171.6 feet, thence west 400 feet, thence south 435.6 feet to the south line of section 21, thence west to a point which is 165 feet east of the south ¼ corner of Section 21, thence north 200 feet, thence west 165 feet to the north and south ¼ line of Section 21, thence north to the center of Section 21, thence east to a point 200 feet west of the east ¼ corner of Section 21, thence north 100 feet, thence east to a point on the east line of the section 100 feet north of the east ¼ corner, thence north to a point 330.29 feet north of the east ¼ corner, thence N87°43'W 165 feet, thence northwesterly 526.9 feet to a point N87°43'W 400 feet from a point on the east section line which is 792.29 feet north of the east ¼ corner, thence north 132 feet, thence west to a point on the east ⅛ line of section 21 which is 132 feet south of the NW corner of the south 4/5 of the SE¼ of the NE¼ of Section 21, thence north on the east ⅛ line to the north line of the south ½ of the NE¼, thence west to the north and south ¼ line, thence north to the north ¼ corner of Section 21, thence east on the south line of *Section 16* to the SW corner of the SE¼ of the SE¼ of Section 16, thence north to the NW corner

of the SE¼ of the SE¼ of Section 16, thence east to a point which is 825 feet west of the east line of Section 16, thence north parallel with the section line to a point which is 250 feet south of the east and west ¼ line of Section 16, thence east 825 feet to place of beginning.

[fol. 34] PARCEL No. 2.

Part of Sections 20 and 21 of Paris Township, Kent County, Michigan described as: Beginning at the east ¼ corner of *Section 20,* thence west 50 feet to the west line of Kalamazoo Avenue, thence north 330 feet, thence east 50 feet to the east line of Section 20 (west line of Section 21), thence north to a point which is 754 feet north of the west ¼ corner of *Section 21,* thence east 375 feet, thence south parallel with the section line 424 feet to the north line of the south ⅛ of the NW¼ of Section 21, thence east 5 feet, thence south 135 feet, thence west 330 feet along the north line of Loralee Street to the east line of Kalamazoo Avenue, thence south 194.92 feet to the SW corner of Lot 12 of Loralee Plat, thence east on the east and west ¼ line of Section 21 to the NW corner of the east ½ of the SW¼ of the section, thence south to the NW corner of Lot 1 of Kentwood Hills, a recorded Plat, thence southeasterly along the northerly line of Lots 1, 2, 3, and 4 to the northeasterly corner of Lot 4 of Kentwood Hills, thence southwesterly 113.4 feet to the southeasterly corner of Lot 4, thence northwesterly along the southerly line of Lots 4, 3, 2 and 1 to the SW corner of Lot 1, thence south on the west ⅛ line to the NE corner of Clearview Plat No. 1, thence west along the north line of said Plat to the NE corner of Lot 33, thence south to the SE corner of Lot 89, thence continuing south parallel with the west line of the Section to a point 225.7 feet north of the south line of Section 21, thence west 210 feet to the west line of the Section (center line of Kalamazoo Avenue), thence north to beginning.

PARCEL No. 3

Part of Section 20 of Paris Township, Kent County, Michigan Described as: Beginning at the center of Section 20, thence east 830 feet more or less to the NE corner of Lot 95 of Langdon Plat No. 1 (being also the NW corner of Langdon Plat), thence south 425.2 feet along the west line of Langdon Plat to its intersection with the northeasterly line of Oak Park Drive, thence southwesterly 60 feet more or less to the corner of Lot 94 of Langdon Plat No. 1 which is 212.37 feet east of the NW corner of said lot, thence west 212.37 feet to the NW corner of said Lot 94, thence northwesterly along the northerly line of the NYC RR right of way to a point which is 50 feet south of the east and west ¼ line of Section 20, thence west to the north and south ¼ line of Section 20, thence south to the south ¼ corner of Section 20, thence west to the SW corner of Section 20, thence north to the west ¼ corner of Section 20, thence east to beginning.

[fol. 35] 2. All of said above described territory is located within the boundaries of said County of Kent and is contiguous to this school district.

3. The latest available taxable valuation of said areas to be detached less than 10% of the latest available taxable valuation of the entire School District of the City of Grand Rapids.

4. It is the intention of this resolution to reaffirm the resolution heretofore adopted by this board of education at a special meeting thereof held December 19, 1962 requesting the county board of education of said County of Kent to detach said above described territory from the Board of Education of the City of Grand Rapids and attach it to this school district by adopting this resolution after December 31, 1962 at 12:01 a.m. (EST), which was the effective date of the annexations of said Breton Avenue, Kendall and Fuller-44th Street areas, to avoid any

question that the said previous resolution, adopted December 19, 1962, was premature.

5. This resolution, certified by the secretary, shall be filed forthwith with the county board of education of the County of Kent, State of Michigan.

AYES: Members Barnes, Christensen, Grooters, De Zwaan and Bowie, constituting the entire membership of this board of education.

Said preambles and resolution were declared unanimously adopted.

Member Christensen, supported by Member Bowie, moved the adoption of the following preambles and resolution:

WHEREAS, The following described territory, known as the Alger Street area, located in Paris Township within the boundaries of this school district, has been detached from said Paris Township and annexed to the City of Grand Rapids by the affirmative majority vote of the legislative bodies of said township and city, under the provisions of § 9 of the Home Rule Act, as amended; and

WHEREAS, Such territory by such annexation has become a part of the School District of the City of Grand Rapids, under the provisions of § 143 of The school code of 1955; and

WHEREAS, There are no qualified electors residing in said territory:

[fol. 36] NOW, THEREFORE, IT IS RESOLVED, That:

1. This board of education does hereby request the county board of education of the County of Kent, State of Michigan to detach the following described territory, known as the Alger Street area, from the Board of Education of the City of Grand Rapids, a second class school district, known as the School District of the City of Grand Rapids, and attach it to this school district, pursuant to

the provisions of chapter 5, part 2 of The school code of 1955, as amended; to-wit:

Part of the SE¼ of Section 10, T6N, R11W, Paris Township, Kent County, Michigan, described as: Beginning at the NW corner of Slater Heights, a recorded Plat, thence west 348.79 feet more or less to the west line of the east 762.8 feet of the west ½ of the SE¼ of Section 10 (Grand Rapids City Limits), thence north to the east and west ¼ line, thence east 1042.79 feet, thence south to the NE corner of Slater Heights, thence west to beginning.

2. All the said above described territory is located within the boundaries of the said County of Kent and is contiguous to this school district.

3. The latest available taxable valuation of said areas to be detached is less than 10% of the latest available taxable valuation of the entire School District of the City of Grand Rapids.

4. This resolution, certified by the secretary, shall be filed forthwith with the county board of education of the County of Kent, State of Michigan.

AYES: Members Barnes, Christensen, Grooters, DeZwaan and Bowie, constituting the entire membership of this board of education.

Said preambles and resolution were declared unanimously adopted.

* * *

On motion duly made, seconded and carried, the meeting adjourned.

R. CLARE CHRISTENSEN
Secretary

[fol. 37]

EXHIBIT "E" TO COMPLAINT

KENT COUNTY BOARD OF EDUCATION

ANNUAL REPORT

JUNE 30, 1962

I INTRODUCTION

A. The County Office
   1. Statutory Requirements
   2. Aims and purposes
   3. The Past Year in Review

II REQUIRED DUTIES OF THE KENT COUNTY BOARD OF EDUCATION

A. Auditing and Finance
B. Census, Membership and Child Accounting
C. Transportation
   Bus Driver Training
D. Tuition
E. School Lunch and Working Permits
F. Teacher Licensing
G. Supervision of Primary Districts
H. Annexation, Consolidations and Transfers
I. Special Education
J. Tax Allocation Board
K. Intermediate School District Map

III PERMISSIVE ACTIVITIES

Diagnostic and Remedial Reading Services
Curriculum Services
Inservice Training
   1. Teachers Institute
   2. Summer Schools
Audio-Visual Aids
School Board Association

APPENDIX

County Office Personnel
Financial Report of County Board of Education
Census Report
Consolidated Financial Report of Schools Districts
School Membership—Public and Non-Public
Transfers, Annexations, and Consolidations
Transportation in Kent County
School Lunch Service
Special Education Summary Report

[fol. 38]

I

INTRODUCTION

This, my first year as Superintendent of Kent County Schools, has been a year of intense interest to me. I have found it to be a position full of challenge and some frustration.

This is a time of change for this office. Primary districts are rapidly disappearing from the educational horizon. The critical situation in the county places the functions of this office to the test and now we have new legislation (Public Act 190) which will bring about many changes in the place which this office holds in the educational organization of the State of Michigan. In one respect the new laws are similar to the old in that the functions of the Intermediate office are classified under (1) required duties and (2) permissive activities. The great challenge to this office lies in the latter—permissive activities. The all important questions which all school people need to ask themselves is "What contributions to better education in the Kent Intermediate School District can this office bring about?"

I wish to report that in all areas other than statutory responsibilities, the Intermediate (formerly county) office

does not supervise instructional activities; but it is in a unique position to supplement and possibly to coordinate local school programs.

In this report I will present as best I can what has taken place the past year, hopeful that this will enable school administrators to determine the needs and the possibilities of this agent of education in this part of the State of Michigan. Under Public Act 190 the approval of a majority of the constituent districts is needed before the Intermediate School District budget may be presented to the tax allocation board. It is hoped that this report will enable school boards and superintendents to work more closely with the office for the ultimate benefit to the thousands of children who come to us to learn and be prepared for citizenship.

E. J. Kleinert
Superintendent

The County Board of Education:

Mr. Victor Weller, President
Mr. Dewey Jaarsma, Vice President
Mr. C. B. Leaver
Mrs. Fred Keeler
Mr. Russell Emmons

[fol. 39] II

REQUIRED DUTIES OF THE KENT COUNTY BOARD OF EDUCATION

A. AUDITING AND FINANCE—The school code directs the County Superintendent to "examine and audit the books and records of any school district when directed to do so by the Superintendent of Public Instruction." The financial accounts of the primary districts and 4th class districts with budgets of not over $100,000 receive a complete audit by this office.

Financial reports of the larger districts when received, receive the following considerations:

1. Check against CPA audit
2. Check state aid, tuition, transportation amounts reported
3. Check for completeness

Although the number of primary districts has diminished and hence less work is required on them, the amount of accounting, advising school districts on special education matters has steadily increased as the number of children in special education has increased. All of this work is done in the auditing office and not in the special education office.

Various statistical summaries are also made in the auditing office. (See appendix.) During the year the Michigan Department of Public Instruction revised the school accounting system. The Kent County Board of Education held a day and evening workshop to acquaint superintendents, secretaries, certified public accountants, township clerks and treasurers with the new forms.

B. CENSUS, MEMBERSHIP AND CHILD ACCOUNTING—"The County Board of Education shall cause to be taken an annual school census . . . ." Census records are collected from all the constituent districts and are combined to form a county census report (see attached report in appendix.)

Following "D" day the attendance and membership records of every school district, large and small are audited by the auditing and accounting office. The figures of the individual school districts are combined to give county totals. Tuition accounts and lists of tuition students are also carefully checked. Two persons do the auditing and accounting work described in Paragraphs A, B and C.

The Deputy County Superintendent also acts as chief attendance officer for the county schools both in the capacity of enforcing attendance laws and in counselling students, parents and teachers. Many times he is [fol. 40] called upon by local school systems, large and small to deal with the most severe attendance problems.

C. TRANSPORTATION—Transportation reports are also collected by the county office. The reports required at the beginning of the school year are processed and data taken from them to determine the number of pupils, distance from school, etc. and forwarded to the Department of Public Instruction. Conferences on transportation problems between the county offices, local school officials and parents are frequent. When the final transportation reports for the year are received, they are checked against the Financial and Statistical Report and other district reports where applicable.

The county office also assists in organizing training schools for bus drivers and responds to any requests for assistance from districts. It is called upon many times to interpret transportation policies to parents.

The Department of Public Instruction relies heavily on the county office for accuracy of reports of transportation in local districts.

D. TUITION—The office acts as a clearing house for information to parents as well as school officials on tuition laws, rates, state reimbursement and many other relative matters. Our accounting offices also assist all local districts participating in the special education program in preparing tuition reports.

E. SCHOOL LUNCH and WORKING PERMITS—All monthly school lunch reports pass through this office for auditing. Each year some 1500 working permits are issued to minors from this office. (See Appendix).

F. TEACHER LICENSING and PLACEMENT—Hundreds of calls come to this office over the year with requests for information on teacher certification. In fact this office is considered as the source for this information in the area. Two or three hundred substitute special certificate applications are processed through this office each year. Limited certificate applications are also channeled over our desks.

The county office of education also acts as a central placement office for the schools in Kent County. All superintendents list their vacancies here. Teachers interested in positions in Kent County are encouraged to file their credentials here. Many times teachers who apply to a superintendent are referred to this office.

G. SUPERVISION OF PRIMARY DISTRICTS—The County Superintendent is charged by statute to (a) recommend all teachers of primary schools in writing and (b) suspend any teacher for cause until the school board employing such teacher may consider such suspension; (c) to classify and control the promotion of pupils; (d) to supervise and direct the work of the teachers; (e) to make reports in writing regarding the condition of their schools to the respective school boards.

[fol. 41] At the beginning of the 1961-1962 school year there were 32 primary districts with 46 teachers under the direct supervision of the county offices. One curriculum consultant was assigned to these schools and contacted them frequently. Further discussion of this work is found in Part III of this report.

H. ANNEXATIONS, CONSOLIDATIONS AND TRANSFERS—At the beginning of the 1961-1962 school year there were 56 school districts in Kent County. During the year one major consolidation took place—Wyoming Public Schools, formerly Wyoming Park, Rogers and Newhall Schools.

Annexations during the year were numerous. See Annexations, Consolidations.

This office bears considerable responsibility in these annexations. In most of them the elections are planned, supplies prepared and reports to all related agencies are made by this office. There are many conferences with local school officials before such an election takes place. Often this office plans and acts as moderator at meeting to discuss the mergers.

TRANSFERS

Any property owner, if contiguous to another district, has the right to petition for transfer to that district. The county board is then required to consider the petition in session and render a decision. If any of the parties involved are not satisfied with the decision of the board, the case may be appealed to the State Board of Education. Here are the steps which this office must take when a petition for transfer is made:

1. Check property ownership, exact location, valuation, number of children involved, condition of schools, roads.
2. Set date of hearing and post notices not less than ten days previous to the hearing.
3. Prepare map and other descriptive material.
4. Hold the hearing.
5. Notify schools involved, property owners, township, county, two state state officials of action taken.

When a property transfer involves districts which extend into other counties, there must be a majority of each county board of education present. In some cases this has involved four county boards.

There is much strictly legal work involved in these transfers and it is regrettable that the county office has practically no source of legal counsel trained and prac-
[fol. 42] ticed in these matters. Thus, the county superintendent is called upon to execute complicated legal matters with the responsibility which goes with it.

The County Board of Education observes the principle of what is best for the children when weighing the validity of the application for transfer. When extensive mergers of school districts occur, there are instances of individual hardship. This applies particularly to an individual who may reside at the extreme distance from the central school and who may actually reside closer to the school in a neighboring district. Indications are that the number of petitions for transfer from one district to another will certainly not decrease. In fact when Senate Bill 1100 goes into effect, which then places second class school districts (Grand Rapids) under the same transfer procedure, it is possible that transfer requests will increase.

SPECIAL EDUCATION

The attached statistical report relating to special education reveals that 235 physically handicapped children, 420 mentally handicapped children, 446 children with emotional problems and 1694 children with speech problems received education or services in the schools during the past year. Although it is not included in the report, approximately the same number of children in the City of Grand Rapids received similar education and services. Thus, over 7000 children benefited from the special education program in the county during the school year, 1961-1962.

Since special education began in 1957 on a county-wide basis, it has shown a continuous numerical growth. However, more important, the growth in quality of pro-

gramming appears to have kept steady pace. Not only are more children being served but they are receiving improved education and services.

An example of this is the high school program for the mentally handicapped. The federal government regarded our program planning in this area highly enough to award us the only research grant to a county in special education in the nation. Our method of psychological and psychiatric consultation is being followed throughout the state as is our preschool inservice training conference. The speech therapy staff, in cooperation with Western Michigan University, also has a federal grant to study how to predict the successful maturation of speech. Our diagnostic staff is studying how to predict which children will have difficulty in school learning. All these things point to a dynamic, forward-looking program.

Members of the special education staff also have had important roles in planning the new unit for the deaf and hard of hearing at the Shawnee Park Elementary School, recently completed; the Lincoln School for trainable retarded, now under construction; and the consolidation of three community agencies, serving the physically handicapped at Mary Free Bed. These are all signs of progress in aiding the handicapped of our community.

[fol. 43] Thus, in direct services to children, parents, and schools; in research to improve our techniques and methods of functioning; and in community planning, special education is playing a significant role in assisting the handicapped toward a goal of independent living.

J. TAX ALLOCATION BOARD—The Michigan statute provides that the county superintendent of schools shall serve as a member of the tax allocation board. As most county officials know, this is a most unhappy and frustrating responsibility. To witness respected and con-

scientious school, township and county officials plead for funds most of which are vital to the education, health and safety of their people; to see the bitterness which sometimes is generated between men of honor is most disheartening. We were, however, impressed with the conduct of fellow members of the allocation board. Everyone familiar with the problem knows that the 15 mill limitation is "impossible" under today's conditions. So all members of the board acted out of conscience and did the best they could with an unpleasant duty that had to be done.

K. INTERMEDIATE SCHOOL DISTRICT MAP—Each county board of education shall make or cause to be made a map of the county, showing by district lines thereon the boundaries of each school district—(*General School Laws* Sec. 297). For the first time in many years an overall school district map was published and distributed. It was used during the year and proved to be invaluable to all interested in school district affairs; transportation, annexation, taxation, etc.

III

PERMISSIVE ACTIVITIES

"The County Board of Education shall be empowered to furnish services on a consultant or supervisory basis to any school district employing a superintendent of schools, upon request of the board of education of that district." (*General School Laws,* Par. Sec. 297)

Teaching is a profession which demands much of its members. The effective teacher must be an informed and alert person. He must be a keen student of sociology and psychology. Above all things he must be an inspired person.

There are four professional teachers and one and one half secretaries who labor in this important division of the

offices of the County Board of Education. Every task they perform is directed at helping the individual teacher be a better prepared, a more understanding person and to be inspired.

The county or intermediate office is in a unique position to do this. (1) The four consultants in the county office are themselves highly skilled teachers made so by excellent training and experience. They are people of ideas, deeply interested in children and ways of making their school experiences more productive.

[fol. 44] (2) The county office is in the best position to exercise leadership at a local level; to act as an intermediary between the Department of Public Instruction and the local school level. (3) Colleges, universities and other institutions interested in education, find it more convenient to work through one county office than to attempt to work with each of the hundreds of school districts in the state. In this way helps are brought to the local school which would not otherwise be available.

Most of the larger school districts in Kent County are faced with three perennial problems. (1) Inadequate funds in the face of rising costs. (2) Shortage of well prepared, well qualified teachers and (3) rapidly increasing enrollments. Therefore they for the most part find it impossible to provide extra staff members such as consultants, people to make a specialty of administering to many excellent ability and performance tests which are available today. The master teacher from the county office is needed as never before to assist schools understaffed to make teaching more effective.

In the following is a description of the main activities of the curriculum consultant. The county is divided into four areas and one consultant serves each area. In addition each consultant has one or more special responsibilities. One of

the staff works exclusively with the primary school districts where direct supervision of instruction is provided.

DIAGNOSTIC and REMEDIAL READING SERVICE—Probably the ability to read is the gateway to the ability of the student to be successful in his school program. While most children are successful in the regular reading program, there is always a considerable number of children who have difficulties. These difficulties may stem from (1) ability level, (2) emotional problems, (3) problems of growth and development or (4) physiological problems. In short these children need special study. This vital service is provided by the county office.

How does it operate?

The program of the Reading Service does not supplant or interfere with functions normally carried out in the local school districts. The staff has no supervisory functions. Assistance is given only when it has been requested.

Diagnostic

Children who are referred for diagnostic testing must be disabled readers. Any child with a discrepancy between his mental capacity and reading achievement may be considered a disabled reader. Thus there are cases of reading disabilities among pupils of low, average, and high mental capacities.

In most cases first and second grade children would not need diagnosis. Third grade children who are one year below achievement level and fourth, fifth and sixth grade children who are a year or more, are possible disabled readers.

[fol. 45] *Diagnostic service may include:*

Administration of intelligence tests, reading tests, individual and diagnostic tests. Use of informal reading inven-

tories. Use of projective techniques. After completion of diagnosis, written reports are given to school and home. Interpretation and recommendations are made through conferences with school personnel and parents.

Materials and resource center:

The Reading Center will maintain an extensive library for curriculum materials in professional books, pamphlets and guides from various schools. It will stock specialized series of books, basic reading books, and magazines. Particular emphasis is placed on corrective or remedial materials. Samples of tests, teaching aids, and practical teacher resources in reading will be maintained in the library for teacher use.

Activities relating to materials might include:

Provide teachers with resource materials and mimeographed helps
Work with faculty groups on resource materials for special studies
Arrange displays and give demonstration on use of materials
Arrange for staff or committees to use filmstrips, movies or special aids in language arts
To loan professional books, pamphlets and guides
For the past year some school equipment by local manufacturers has also been on display in the Materials Center

CURRICULUM SERVICES—In these days of tremendous changes in every phase of human experience, it is so very important that school people keep abreast of new and better materials, of new method of constant weighing the methods they are employing in their teaching. *There is so much more to teach today.* With the incidental learning which children get out of school via television, papers, magazines, etc. holding their attention in school and help-

ing them to think logically; to piece together all of the bits of knowledge, takes much more skill on the part of the teacher. The consultant from the county office:

1. Help local teachers groups to—
   (a) Study new textbooks in all subject matter fields
   (b) Individual conferences with teachers, superintendents, principals
   (c) Use and interpret testing programs
   (d) Develop kindergarten guide
   (e) Conduct evaluation of entire school program

INSERVICE TRAINING—The activities of the curriculum staff in the field of inservice education of teachers on the job in helping these busy people to keep "up with the times" are especially appreciated by the teachers of Kent County. On March 16, 1962 the annual county-wide institute was held at Wyoming Park High School when some 1500 teachers met with 26 educational and other leaders to discuss educational problems and to be inspired.

[fol. 46] They met in general session where they were addressed by President Stephen Nisbet of the Constitutional Convention and by Dr. James Zumberge, President of Grand Valley College. Later they met in thirty-six different groups to discuss practically every phase of education. Cost of this was borne by the institute fund paid by the teachers of the county.

Through the efforts of one of the consultants, a county chapter of the *International Reading Association* was organized. The purpose of this organization is the improvement of reading. This same person was also active promoting a seminar on *Alcohol Education* in which several Kent County teachers participated.

Liaison was also maintained with the Grand Rapids Kent County Health Department and a county consultant served as secretary of the group.

SUMMER READING INSTITUTE

Patti Cummins from Michigan State University worked with 19 teachers from June 18, 1962 through August 3, 1962.

The teachers and the director met daily for seven weeks from 8:00 A.M. to 12:00 P.M.

Teachers received nine term hours of credit in advanced reading work. Time was devoted to reviewing developmental skills in reading, diagnostic techniques and tests used in identifying reading difficulties and methods and material available for remedial reading.

Monday, June 26th

Seventy boys and girls currently placed in grades through six, who were previously screened to determine a reading retardation of one year or more, enrolled. Sixty children were from Kent County schools, eight from Grand Rapids schools and two from non-public.

Children worked with their teachers from 10:30 till 12:00 daily for six weeks.

Each child received individual diagnostic test to identify their need then were given individual instruction. Each teacher worked with three or four children.

The program was sponsored by Northview Public Schools, Kent County Board of Education and Michigan State University.

KENT COUNTY SUMMER SCHOOLS DRAW MANY CHILDREN

Vacation School

Monday, June 18, 1962 most boys and girls and many teachers relaxed and started making interesting plans for the summer. However, 28 teachers, four special teachers

in art, music, reading, physical education and seven speech therapists arrived at North Godwin Elementary School to be greeted by Mrs. Helen Wolfin, Director of the Summer [fol. 47] School and make plans for the next six weeks.

Tuesday, June 19, 1962, 296 boys and girls ranging from pre-school through six grade level were enrolled. Fifty-one children came from Grand Rapids Public Schools; 61, non-public schools and 184, Kent County Public Schools.

Purposes of this summer program were really two-fold:

Twenty-eight experienced teachers working under the guidance of Western Michigan University received concrete experience in using new materials and teaching techniques. They also earned six semester hours of directed teaching credit required for permanent certification.

Boys and girls had a continuation of their regular school year in directed reading, arithmetic, spelling and language. Planned enrichment was experienced in science, social studies, music and art and opportunities for some individualized help.

They worked in an environment that was rich with an abundance of library books, 16mm films, film strips and arts and crafts materials.

This summer vacation school was made possible through the combined efforts of Godwin Public Schools, Kent County Board of Education and Western Michigan University.

The *Audio Visual Department of the Kent County Board of Education* has found greater acceptance by the schools of the county each year of its existence in spite of the large number of school consolidations. The cost of film strips, 16mm films and cost of film cataloging, purchasing, and distributing is all borne by school participants. The only cost to the county is the personnel, one person working in

the film library and that portion of the consultant's time in directing the department. (See appendix for financial report).

The Audio-Visual Program has completed its seventh year of service to the county schools.

Participants for 1961-1962 (second year of N.D.E.A. Program). Filmstrips and 16mm:

Schools enrolled	113 (buildings)
Children served	13,816
Teachers served	627

9,000 filmstrips serviced	2,322 16mm films serviced
4,500 sent out	1,161 sent out
4,500 returned	1,161 returned

The library is still in its infancy, yet everyone seems well satisfied with the quality of material and service it offers. [fol. 48] Teachers feel that these audio-visual materials make a definite contribution to the enrichment of their teaching.

Membership has been offered this year on a per teacher basis or on a membership basis by schools placing materials in our library ordered under Title III of the N.D.E.A.

Last fall $2,390.10 worth of materials were added to the program through N.D.E.A. orders. $1,050.06 was also spent on material from the audio-visual budget.

In November 1961, orders were placed by local schools for additional 16mm films and filmstrips, which will give service for 1962-1963 school year. These materials will be placed in the library and be ready for circulation by fall.

Membership on per teacher basis is not offered in just 16mm at this time. Schools may enroll in just filmstrip, or filmstrip and 16mm program. The plan is as follows for 1962-1963.

Membership Fee

Teachers	*Filmstrip ONLY*	*Also 16mm Enrollment*	*Total for* both *filmstrips and 16mm Enrollment*
1 thru 6 teachers	$15 per teacher	$10 per teacher	$25 per teacher
7 thru 14 teachers	$90 plus $7.50 per teacher above 6 teachers	$10 per teacher	$90 plus $17.50 per teacher above 6 teachers
15 teachers and over	$150 plus $5.00 per teacher above 14 teachers	$7.50 per teacher above 14 teachers	$150 plus $12.50 per teacher above 14 teachers

To be eligible for services, all elementary teachers in school must enter the program. Teachers can order by mail or telephone from the catalog.

Each teacher is allowed three filmstrips per week

Each teacher is allowed one-16mm film per week

Films and filmstrips may remain in the school three days and returned on the fourth. We mail films and filmstrips to schools. Return postage is paid by the school:

4 cents postage for filmstrips (3 in a container)

16mm film, one reel —6 cents
two reels—8 cents

[fol. 49] THE COUNTY SUPERINTENDENT—
THE ANSWER MAN

This title may seem presumptuous but one is amazed at the number and variety of requests for help which come to

this office. The other day an individual called for the correct spelling of the name "Kremlin". True this is unusual, most of the questions are on schools, teachers, school district boundaries, tuition, transportation, school programs, school law. It is a source of pride to be members of the staff that this office is considered as a reliable source of some general and much special information.

The county superintendent finds himself by virtue of his office participating in many duties. He is a member of the County Library Board. He is also a member of the Grand Rapids Chamber of Commerce Education Committee; also of the YMCA Education Committee. This past year the county superintendent was active in revitalizing the Kent County School Board Association culminating in an annual banquet attended by 250 board members and their wives.

The county superintendent is also the executive secretary of the Kent County School Administrators Association and as such is responsible for programs of that organization.

[fol. 50]

Appendix

Statistical Data

Personnel

	Number of Positions
A. *Regular Program*	
Members of the Board of Education	5
Superintendent	1
Assistant or Deputy Superintendent	1
Curriculum Consultants (Serving both elementary and secondary)	4
Special Education personnel as defined below in "B"	34
Child Accountant	1
Visiting Teachers	9
Secretarial and Clerical	7
Music Teachers (part time)	3
Grand Total Personnel	65
B. *Special Education*	
Director and Assistants	2
Diagnosticians of Mentally Handicapped	5
Type "C" Consultants for Mentally Handicapped	5
Teacher Counselors for Physically Handicapped	1
Teachers of the Homebound and/or Hospitalized	3
Speech Correctionists	14
Secretarial	4
Total Special Education Employees	34

SCHOOL OPERATING COSTS — July 1, 1960 - June 30, 1961

	Gen. Funds Receipts	Gen. Fund Disbursements	Gen. Fund Property Tax	All State Aid	Voc. Ed. N.D.E.A. Grants	Paid on Bonds	Val. of Dist.
Ada 6fr	$ 6,951.25	$ 7,030.32	$ 2,083.57	$ 4,865.68	$	$	$ 231,466.00
Algoma 1fr	844,048.47	851,814.78	206,098.56	396,540.91	6,270.98	77,000.00	17,501,794.00
Alpine 10	10,845.72	8,295.12	7,351.44	3,423.34			923,292.00
Byron 1fr	526,929.31	458,257.93	152,856.32	250,108.47	6,661.22	30,000.00	10,988,632.00
Caledonia 1fr	491,415.48	440,953.35	113,773.10	319,887.53	8,036.05	58,000.00	14,567,818.00
Cascade 7fr	11,979.41	11,697.94	2,881.29	8,907.95			375,841.00
Courtland 1	20,486.01	22,014.03	8,102.01	10,912.45			1,053,443.00
Courtland 3	14,901.73	14,760.93	4,071.30	10,193.41			530,792.00
Courtland 5	15,956.24	15,882.82	4,922.16	10,669.92			447,756.00
Courtland 6fr	8,653.25	8,168.78	3,333.06	5,098.87			293,723.00
Gaines 3	10,601.45	7,214.01	5,917.43	4,080.57			528,688.00
Grand Rapids City	12,596,176.13	12,331,204.22	6,426,039.18	4,908,738.20	163,953.22	79,000.00	605,528,136.00
3fr	1,732,923.44	1,675,945.58	908,691.76	500,394.27	8,038.82	290,000.00	65,433,117.00
15fr	970,954.03	946,409.21	311,701.25	492,675.36	2,885.97	70,500.00	26,841,265.00
Grattan 1fr	47,824.57	47,060.77	16,460.11	28,007.92	315.73	3,000.00	2,129,065.00
Grattan 3fr	4,394.57	4,577.81	3,132.93	1,225.50			357,730.00
Grattan 5fr	14,666.72	13,578.84	10,934.79	3,420.00			1,414,303.00
Grattan 6fr	9,436.85	10,019.08	5,490.52	3,944.61			651,042.00
Lowell 1fr	603,348.04	595,191.24	127,520.71	310,939.95	5,526.64	35,000.00	14,574,041.00
Lowell 6	7,037.22	6,236.40	2,391.49	4,636.93			270,982.00
Nelson 2	8,369.59	8,735.28	2,138.14	6,134.44			269,664.00

[fol. 52]

SCHOOL OPERATING COSTS — July 1, 1960 - June 30, 1961

	Gen. Funds Receipts	Gen. Fund Disbursements	Gen. Fund Property Tax	All State Aid	Voc. Ed. N.D.E.A. Grants	Paid on Bonds	Val. of Dist.
Nelson 3fr	$ 14,450.65	$ 13,309.71	$ 5,228.38	$ 9,172.28	$	$	$ 629,421.00
Nelson 4fr	14,510.50	13,744.25	3,621.33	10,884.66			363,001.00
Nelson 5fr	429,800.35	428,731.56	50,321.03	254,963.35	8,255.75	15,000.00	6,447,159.00
Nelson 6	7,216.15	7,050.55	1,541.34	5,545.49			176,646.00
Nelson 7fr	9,026.61	8,309.02	2,724.48	5,569.66	54.31	2,000.00	225,180.00
Nelson 9fr	118,428.93	120,105.73	19,326.73	54,156.31		3,000.00	1,374,587.00
Oakfield 3fr	20,273.31	20,406.83	7,893.74	11,714.62			664,149.00
Paris 6fr	1,760,177.17	1,554,619.61	869,921.71	468,972.44	17,456.72	35,000.00	71,306,534.00
Paris 8fr	12,630.64	9,179.82	8,887.37	3,676.50			1,007,290.00
Paris 12fr	1,120,875.24	1,051,022.29	460,703.11	463,806.62	4,315.74	112,200.00	29,204,852.00
Plainfield 3	6,611.29	9,267.58	4,964.98	1,111.50	49.64		1,010,540.00
" 9fr	567,691.25	624,83[illegible].99	174,130.30	306,921.23	11,967.14	33,500.00	9,434,259.00
" 16fr	740,606.40	653,857.36	230,513.44	453,546.00	5,141.96	49,000.00	25,279,516.00
Solon 4	24,086.75	22,657.07	5,032.95	17,882.50	125.81	1,900.00	491,319.00
Solon 6fr	7,808.36	8,022.92	2,590.20	4,960.53			336,406.00
Solon 8	7,493.03	7,079.19	2,198.32	5,130.87			268,216.00
Sparta 2fr	683,139.80	642,255.96	174,865.54	449,449.79	9,487.67	82,000.00	18,699,329.00
Spencer 1fr	14,690.56	13,262.50	2,910.65	10,34[illegible].50			426,500.00
Spencer 2	7,964.49	7,55[illegible].35	2,369.74	5,439.26		400.00	210,677.00
Tyrone 4fr	365,151.03	348,550.51	51,418.65	202,165.07	5,011.73	11,000.00	4,869,278.00
Tyrone 8fr	40,421.80	44,316.40	8,414.59	24,767.00	241.95		1,018,491.00
Vergennes 1	2,578.00	4,855.69	1,890.53	346.31			240,166.00

[fol. 53]

	Gen. Funds Receipts	Gen. Fund Disbursements	Gen. Fund Property Tax	All State Aid	Voc. Ed. N.D.E.A. Grants	Paid on Bonds	Val. of Dist.
Vergennes 4fr	$ 9,370.06	$ 8,726.24	$ 4,865.85	$ 4,464.21	$	$	$ 618,604
Vergennes 5	8,464.54	7,638.1[illegible]	3,017.79	5,42[illegible].39			333,813
Vergennes 7	[illegible], 23.20	[illegible],778.95	4,245.27	4,517.15			548,666
Vergennes 11	7,984.16	6,911.86	3,396.22	4,587.94			394,291
Walker 1	7,216.70	8,057.58	6,446.60	427.50			1,438,441
Walker 11	194,203.07	185,574.85	121,485.92	67,677.32		9,000	13,726,745
Walker 16fr	435,498.12	422,792.56	182,457.51	223,803.95	4,241.86	32,000	19,705,953
Wyoming 1fr	941,265.29	879,516.99	302,550.58	547,341.01	13,024.35	122,000	35,098,876
" 2fr	676,083.92	614,031.76	188,881.57	450,964.12	5,008.66	57,000	15,069,675
" 4	670,920.46	641,933.91	366,742.31	211,775.90	6,553.64		36,765,896
" 7	643,864.58	636,925.40	327,026.00	204,376.40	10,350.95		26,586,176
" 8fr	759,339.78	731,028.80	248,010.51	394,874.38	3,432.00	66,000	19,925,812
" 9	816,088.40	762,030.99	258,218.88	354,537.10	6,015.34	69,000	20,342,151
* Algoma 2fr	147,340.85	145,444.88	27,011.44	115,190.40		20,000	3,528,051
* Courtland 2	9,548.80	9,760.28	4,049.76	5,221.49			287,408
* Courtland 4fr	8,773.96	10,130.96	3,913.89	4,681.55			392,296
* Plainfield 15fr	16,402.79	17,969.66	3,962.65	9,223.84	262.06	5,000	467,767
* Solon 5	3,561.67	4,606.87	2,678.17	883.50			313,863
* Cannon 2fr	29,221.87	30,313.45	7,018.56	20,867.10		2,000	900,582
* Cascade 12fr	1,269.38	1,990.69	100.88	1,168.10			483,037
* Lowell 12	8,179.93	7,132.74	4,072.76	3,933.80	18.52		503,882
Total	$29,336,974.90	28,349,356.01	12,487,513.34	12,691,002.13	316,910.54	1,383,500	1,147,515,378

*Annexed to other districts in 1961-1962

SCHOOL CENSUS AS OF MAY 31, 1962

District	Under 5	5 to 19	Total
Ada 6fr	9	28	37
Algoma 1fr	1,037	3,002	4,039
Alpine 10	37	68	105
Byron 1fr	737	1,933	2,670
Caledonia 1fr	681	1,821	2,502
Cascade 7fr	27	60	87
Courtland 1	47	106	153
Courtland 3	29	73	102
Courtland 5	29	62	91
Courtland 6fr	19	44	63
Gaines 3	17	40	57
Grand Rapids City	21,739	54,563	76,302
Grand Rapids 3fr	1,143	4,065	5,208
Grand Rapids 15fr	980	2,841	3,821
Grattan 1fr	89	246	335
Grattan 5fr	50	143	193
Grattan 6fr	29	51	80
Lowell 1fr	770	1,873	2,643
Lowell 6	25	32	57
Nelson 2	14	52	66
Nelson 3fr	18	71	89
Nelson 4fr	20	85	105
Nelson 5fr	465	1,134	1,599
Nelson 6	16	37	53
Nelson 7fr	11	47	58
Oakfield 3fr	33	111	144
Paris 6fr	1,597	4,017	5,614
Paris 8	43	138	181
Paris 12fr	2,332	4,118	6,450
Plainfield 3	24	52	76
Plainfield 9fr	851	1,642	2,493
Plainfield 16fr	1,396	2,633	4,029
Solon 4	60	132	192
Solon 6fr	20	55	75
Solon 8	15	43	58
Sparta 2fr	992	2,655	3,647
Spencer 1fr	18	60	78
Spencer 2	9	35	44
Tyrone 4fr	365	996	1,361
Tyrone 8fr	79	191	270
Vergennes 1	14	16	30
Vergennes 4fr	15	68	83
Vergennes 5	20	49	69
Vergennes 7	29	62	91
Vergennes 11	10	34	44
Walker 1	8	21	29
Walker 11	166	782	948
Walker 16fr	959	2,344	3,303
Wyoming 1fr	1,636	3,979	5,615
Wyoming 7	726	2,241	2,967
Wyoming 8fr	1,330	2,823	4,153
Wyoming 11	3,861	8,245	12,106
TOTAL	44,646	110,019	154,665

[fol. 54]

KENT COUNTY BOARD OF EDUCATION
FINANCIAL REPORT
JULY 1, 1961 - JUNE 30, 1962

OPERATING FUND			
Balance July 1, 1961			$ 56,439.24
RECEIPTS			
State Aid		$ 16,000.00	
1962 Kent County Appropriation		81,984.00	
Transfer from Special Education		2,730.00	
Transfer for Longevity		253.50	
Election expense reimbursement		426.39	
Sale of maps		13.50	
Refund		32.40	
TOTAL RECEIPTS			$101,439.79
TOTAL RECEIPTS PLUS BALANCE			$157,879.03
DISBURSEMENTS			
Salaries		$ 84,549.03	
School Board per diem		2,135.99	
Office supplies		1,687.54	
Printing and binding		5,672.54	
Telephone		1,884.29	
Teaching supplies		537.31	
Transportation and travel		3,321.53	
Equipment repairs and Maintenance		293.88	
Postage		1,229.00	
Equipment - Capital Outlay		1,430.44	
Conference meetings		62.79	
Election expense		222.41	
Visual Aid maintenance and repair		71.62	
TOTAL DISBURSEMENTS			$103,098.37
BALANCE JUNE 30, 1962 - OPERATING FUND			54,780.66
TOTAL DISBURSEMENTS PLUS BALANCE			$157,879.03
* * * * * * * * *			
MUSIC FUND			
Balance July 1, 1961	$2,153.83		
Receipts	2,773.00		
Total Receipts Plus Balance		$4,926.83	
Disbursements			
Salaries	$2,400.84		
Transportation and Travel	706.21		
Total Disbursements		$3,107.05	
Balance June 30, 1962			$ 1,819.78
SCHOOL SUPPLIES FUND			
Balance July 1, 1961	$ 184.79		
Receipts	525.33		
Total Receipts Plus Balance		$ 710.12	
Disbursements		512.40	
Balance June 30, 1962			$ 197.72
VISUAL AID			
Balance July 1, 1961	$1,659.64		
Receipts	1,757.70		
Total Receipts Plus Balance		$3,417.34	
Disbursements		1,217.51	
Balance June 30, 1962			$2,199.83

[fol. 55]

AUDIT FUND

Balance July 1, 1961	$2,171.39		
Receipts	3,252.00		
Total Receipts Plus Balance		$5,423.39	
Disbursements			
Salaries	$4,500.80		
Travel	124.18		
Total Disbursements		4,624.98	
Balance June 30, 1962			$ 798.41

BALANCES July 1, 1961--ALL FUNDS	$ 62,608.89
TOTAL RECEIPTS - ALL FUNDS	$109,747.82
TOTAL DISBURSEMENTS - ALL FUNDS	$112,560.31
BALANCES June 30, 1962--ALL FUNDS	$ 59,796.40

* * * * * * * * * * * *

SPECIAL EDUCATION

Balance July 1, 1961			$457,718.88
Receipts			
Current Tax Collections	$530,794.28		
Delinquent Tax Collections	34,160.71		
Interest on Delinquent Taxes	1,705.20		
State School Aid	133,300.00		
Interest on Investment	14,284.27		
Refunds	243.26		
Workshop fees	787.36		
Total Receipts		$715,275.08	
Total Receipts Plus Balance			$1,172,993.96
Disbursements			
Administrative salaries (clerks)	$7,622.50		
Administrative supplies	1,378.13		
Building Rental	1,900.00		
Salaries - Supervisors	19,782.97		
Teaching	222,647.51		
Clerical	10,323.85		
Transportation and Travel	15,579.79		
Employees Hospital Insurance	3,986.08		
Teaching Supplies	2,278.65		
Library	171.73		
Custodial salaries	410.00		
Telephone	1,618.70		
Building and Janitor supplies	167.79		
Building maintenance	1,361.46		
Equipment maintenance	338.55		
Insurance	82.02		
Office Equipment	2,294.26		
In-service expense	2,553.73		
Transportation of pupils	1,137.94		
Payments to operating districts	339,989.22		
Tuition Reimbursements	37,451.71		
Rehabilitation program	18,670.26		
Capital Outlay-Room Construc.	256,106.68		
Total Disbursements		$947,853.53	
Cash Balance June 30, 1962		225,140.43	
Total Disbursements Plus Balance			$1,172,993.96

[fol. 56]

MEMBERSHIP DATE - SEPTEMBER 29, 1961

1960 U.S. Census - Kent County total population -- 363,187

SCHOOL DISTRICTS

21 superintendencies		Second Class	1
33 rural		Third Class	4
54 Total		Fourth Class	18
		Primary	28
		Closed	3
		Total	54

CITY OF GRAND RAPIDS				
Public	31,162.1			
KENT COUNTY	42,010			
TOTAL Public		73,172		
CITY OF GRAND RAPIDS				
Non-Public	18,866			
KENT COUNTY				
Non-Public	7,169			
TOTAL Non-Public		26,035		
GRAND TOTAL			99,207	
CITY OF GRAND RAPIDS				
Public				
Elementary	19,566			
Secondary	11,596.1			
		31,162.1		
Non-Public				
Elementary	13,906			
Secondary	4,960	18,866		
TOTAL CITY			50,028.10	
KENT COUNTY				
Public				
Elementary	27,485			
Secondary	14,525.25			
		42,010.25		
Non-Public				
Elementary	5,315			
Secondary	1,854	7,169		
TOTAL COUNTY			49,179.25	

* * * * * * * * * * * * * * * * * *

Increase over 1960			
Grand Rapids			
Public	3,274.8		
Non-Public	1,207		
County			
Public	252.25		
Non-Public	(506)		
Total Increase			
Public		3,527.05	
Non-Public		701	4,228.05

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Kent County

Membership Report by Districts
as of September 29, 1961

LIST ALL DISTRICTS ACCORDING TO INSTRUCTIONS
INCLUDE CLOSED DISTRICTS

Dist. No.	Township or City	Name of Sch.	Elem. Memb.	Secondary Memb.	Open	Closed
1	Grand Rapids	Gr. Rpds.Cy.	19,566	11,596.1	X	
6fr	Paris	Godwin	1,995	1,324	X	
16fr	Plainfield	Northview	1,610		X	
1fr	Byron	Byron Comm.	617	444	X	
1fr	Caledonia	Caledonia	846	606	X	
8fr	Tyrone	Casnovia	137		X	
5fr	Nelson	Cedar Springs	653	661	X	
9fr	Plainfield	Comstock Park	891	486	X	
3fr	Grand Rapids	E. Gr. Rapids	1,923	1,246	X	
11	Walker	Fairview	455		X	
15fr	Grand Rapids	Forest Hills	1,575	970	X	
7	Wyoming	Godfrey-Lee	782	646.25	X	
1fr	Wyoming	Grandville	1,734	1,321	X	
8fr	Wyoming	Kelloggsville	1,319	801	X	
4fr	Tyrone	Kent City	528	404	X	
16fr	Walker	Kenowa Hills	1,062	467	X	
12fr	Paris	Kentwood	1,833	730	X	
1fr	Lowell	Lowell	943	718	X	
2fr	Wyoming	Mewhall	2,421		X	
1fr	Algoma	Rockford	1,482	1,129	X	
9	Wyoming	Rogers	1,186	818	X	
9fr	Nelson	Sand Lake	123	96	X	
2fr	Sparta	Sparta Area	1,503	868	X	
4	Wyoming	Wyoming Park	799	790	X	
1fr	Grattan	Grattan Cent	146		X	
6fr	Ada	Farrell	15		X	
10	Alpine	Boyd	27		X	
7fr	Cascade	Snow	43		X	
1	Courtland	Stinson	58		X	
3	Courtland	Courtld.Cent.	53		X	
5	Courtland	Benham	35		X	
6fr	Courtland	Evans	23		X	
3	Gaines	Dodge	26		X	
3fr	Grattan	Cooley				X
5fr	Grattan	Talbot	34		X	
6fr	Grattan	Ashley	23		X	
6	Lowell	Mapes	22		X	
2	Nelson	Punches	25		X	
3fr	Nelson	E. Nelson	35		X	
4fr	Nelson	White Dove	49		X	
8	Nelson	Nelson Center	21		X	
		TOTAL				

[fol. 58]

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Kent County

Membership Report by Districts
as of September 29, 1961

LIST ALL DISTRICTS ACCORDING TO INSTRUCTION
INCLUDE CLOSED DISTRICTS

Dist. No.	Township or City	Name of Sch.	Elem Memb.	Secondary Memb.	Open	Closed
7fr	Nelson	Huggard	29		X	
3fr	Oakfield	Horton	52		X	
8	Paris	East Paris	24		X	
3	Plainfield	Wilson	30		X	
4	Solon	Christian Hill	86		X	
6fr	Solon	Pioneer	29		X	
8	Solon	Hoag	22		X	
1fr	Spencer	Griswold	39		X	
2	Spencer	Victory	21		X	
1	Vergennes	Alton	19		X	
4fr	Vergennes	Moseley	30		X	
5	Vergennes	Water	24		X	
7	Vergennes	Bennett	28		X	
11	Vergennes	McPherson				X
1	Walker	O'Brien				X

[fol. 60]

KENT COUNTY NON-PUBLIC SCHOOLS MEMBERSHIP, September 29, 1961

School	Kgn.	1	2	3	4	5	6	7	8	9	10	11	12	0	El.	Sec.	Teachers	Sch.District
Ada Christian	21	15	16	20	17	11	20	18	13	20	-	-	-	-	120	51	6 - 2	GR 15fr
Byron Cen. Chr.	42	51	49	51	69	51	40	40	35	22	-	-	-	-	353	97	12 - 3	Byron 1fr
Childrens Retreat	-	-	-	-	-	-	-	-	-	-	-	-	-	142	142	-	4 - .	Paris 12fr
Cutlerville Chr.	59	65	51	51	49	32	46	31	35	35	-	-	-	-	353	101	13 - 3	Paris 12fr
Dutton Chr.	13	14	19	17	16	14	11	17	16	9	-	-	-	-	104	42	3 - 2	Caledonialfr
E. Paris Chr.	21	11	20	24	25	22	17	32	10	20	-	-	-	-	140	62	5 - 2	Paris 8
Godwin Immanuel	53	45	51	36	39	41	33	21	23	22	-	-	-	-	298	66	10 - 3	Wyoming 9
Grandville Chr.	56	47	49	43	51	40	31	36	26	18	-	-	-	-	317	80	10 - 3	Wyoming 1
Hope Prot.Ref.	20	32	29	25	24	16	20	11	16	14	-	-	-	-	16[illegible]	41	7 - 2	Wyoming 1
Kelloggsville Chr.	46	57	35	31	41	33	22	25	15	31	-	-	-	-	265	71	8 - 2	Wyoming 8fr
South Chr.High	-	-	-	-	-	-	-	-	-	-	119	91	98	-	-	308	10	Paris 12fr
Southwest Chr.	62	60	60	52	58	63	56	93	85	85	-	-	-	-	411	263	13 - 9	Wyoming 7
Walker Chr.	14	19	15	13	21	12	15	13	8	12	-	-	-	-	109	33	3 - 3	Walker 16fr
Wyo. Park Chr.	53	56	45	37	38	45	28	-	-	-	-	-	-	-	302	-	10 -	Wyoming 4
Trinity Lutheran	-	11	11	12	9	11	15	17	12	-	-	-	-	-	9[illegible]	-	3	Sparta 2fr
Assumption B.V.M.	-	31	37	27	36	25	16	20	12	-	-	-	-	-	204	-	6	Algoma 1fr
Holy Name	-	80	64	51	59	55	53	51	50	-	-	-	-	-	463	-	9	Wyoming 7
Holy Trinity	-	26	26	20	20	26	27	30	24	-	-	-	-	-	209	-	5	Walker 16fr
St.John Vianney	-	-	140	115	131	122	100	78	95	-	-	-	-	-	709	-	18	Wyoming 8fr
St. Marys	-	17	21	14	15	15	11	15	12	-	-	-	-	-	120	-	4	Lowell 1fr
St. Patrick	-	31	26	26	22	27	20	18	13	16	16	13	11	-	152	87	4 - 3	Grattan 5fr
St. Sebastian	-	-	-	25	23	21	20	-	-	-	-	-	-	-	89	-	2	Byron 1fr
St. Stephan	-	90	70	79	69	65	64	67	52	-	-	-	-	-	556	-	16	G.R. 3fr
St. Pius the X	-	-	-	-	39	31	18	17	-	-	-	-	-	-	105	-	3	Wyoming 1fr
T o t a l	460	758	844	777	871	780	683	650	552	304	135	104	109	142	5067	1302	174	47

TRANSFERS, ANNEXATIONS AND CONSOLIDATIONS

July 1, 1961 to June 30, 1962

TRANSFERS

Date	Ac'ge	Val.	Pupils Involved	From District	To District
1961					
July 17 (3)	180A	$13,550	3	Alpine 10 (Boyd)	Sparta
July 17	5A	200	-	Sparta	Rockford
July 17	49A	2,000	1	Lowell 6 (Mapes)	Lowell
Aug. 15 (7)	10A	5,200	13	Keene 2fr (Sayles)	"
Aug. 21	15½A	2,500	1	Vergennes 5 (Water)	"
Aug. 21	100A	2,600	1	Vergennes 4fr (Moseley)	Belding
Aug. 28 (2)	115A	3,300	1	Nelson 2 (Punches)	Cedar Springs
Aug. 28	80A	2,200	2	Grattan 1fr (Grattan Ctr)	Rockford
Sept. 18	2A	1,800	5	Kenowa Hills	Comstock Park
Dec. 29 (2)	¼A	Not est.	0	East Gr.Rapids	Forest Hills
1962					
April 16	115A	5,800	1	Hudsonville	Grandville
April 16	70A	1,100	0	Rockford	Forest Hills
April 16	2A	2,500	1	Gaines 3 (Dodge)	Kentwood
April 16	2.7A	3,100	0	East Gr.Rapids	Forest Hills
May 21 (3)	125A	4,000	7	Tri-County Area Schools	Cedar Springs
May 21 (2)	5A	2,300	3	Oakfield 3fr (Horton)	Greenville

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CONSOLIDATIONS

Date	Dist. Involved	Number of Pupils	New District Name	New Dist. Val.
Jan. 16, 1962	Newhall, Wyoming Park, Rogers	Membership 6,016 Census 6,861	Wyoming #11 Wyoming Public Schools	$75,076,238

ANNEXATION ELECTION

Date	District to be Annexed	Annexing District	Val. of District	Number of Pupils	Val. of Annexing Dist.	Number of Pupils
1961						
July 1	Briggs	Cedar Springs	$ 313,863	31	$ 6,447,159	Mem. 1146
July 1	Townline	(Caledonia	483,037	41	14,567,818	Mem. 1429
		(Kentwood			29,204,852	Mem. 2542
July 6	Cannonsburg	Rockford	900,582	166	15,245,325	Mem. 1731
July 6	Algoma Unit	Cedar Springs	821,851	75	6,447,159	Mem. 1146
July 31	Goff	Rockford	487,767	83	15,245,325	Mem. 1731
Aug. 23	Becker	Rockford	392,296	47	15,245,325	Mem. 1731
Aug. 24	Shank	Rockford	287,408	44	15,245,325	Mem. 1731
Aug. 28	Sweet	Lowell	503,882	30	11,631,742	Mem. 1362
Aug. 28	Ware	Lowell	166,839	33	11,631,742	Mem. 1362
Sept. 6	Star (part)	Kenowa Hills	138,210	36	20,657,579	Mem. 1529
1962						
April 3	Sand Lake	Howard City	1,286,493	230	5,141,984	Mem. 677
April 30	Cooley	Belding Area	358,380	37	15,337,886	Mem. 1566

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KENT COUNTY SCHOOL DISTRICTS

	2nd Class	3rd Class	4th Class Non High School	4th Class High School	Primary	Total Districts
July 1, 1961	1	2	4	19	35	61
June 30, 1962	1	3	3	15	30	52

TRANSPORTATION IN KENT COUNTY

1960-1961

School	Trans.Exp.	No. Buses	No. Pupils	State Reimburs.	Mileage
Algoma Twp.	$14,941.49	6	581	$14,215.64	-
Byron Community	31,022.12	17	1,382	6,974.75	97,867
Caledonia	35,341.24	24	1,210	30,265.10	137,742
Cannonsburg	2,484.00	1	-	2,396.17	-
Casnovia	2,430.00	1	96	1,549.08	12,250
Cedar Springs	21,478.06	9	520	9,024.70	79,860
Comstock Park	15,406.11	4	481	6,915.71	23,080
Forest Hills	48,989.81	31	2,108	47,224.06	203,035
Grandville	18,871.64	6	635	9,070.39	43,450
Grattan	5,388.70	2	116	5,348.54	9,360
Kenowa Hills	4,529.65	3	201	-	25,740
Kent City	14,746.36	9	593	14,883.95	64,350
Kentwood	32,571.42	15	1,900	17,827.52	80,491
Lowell	35,729.10	16+	811	21,552.83	129,692
Northview	18,771.77	9	916	22,037.70	92,595
Rockford	38,793.67	16+	1,108	21,407.42	134,446
Rogers	7,021.11	2	146	408.00	6,159
Sand Lake	9,417.39	4	147	3,681.53	29,196
Sparta	29,661.03	14	1,206	22,662.14	109,296

This report is confined to those districts operating bus fleets and does not list transportation payments and state reimbursements to sending districts.

SPECIAL MILK PROGRAM July 1, 1961 to June 30, 1962

	Total ½ pts. Milk with lunch	Total ½ pts. Milk without lunch	Amt. of Claim	Milk served Adults (½ pts.)	Total Milk Purchased (½ pts.)	Schools Serving Special Milk	Vending Machine	½ pts. @ 1¢
Algoma 1fr	224,256		$8,970.24	3,989	332,942	7		
Byron Center		110,324	3,309.72		110,324	9		
Caledonia	74,968	13,372	3,399.88	3,887	133,209	4		
Cascade 7fr		6,705	201.15		6,705	1		
Courtland 1	4,632	428	189.12	144	9,373	1		
Courtland 3	5,288		158.64		5,288	1		
Courtland 5	4,038		121.14		4,038	1		
Gaines 3	3,156		94.68		3,156	1		
Grand Rapids City	1,155,912	957,381	74,958.91	22,695	2,572,028	43		
Grand Rapids 3fr	47,359	58,026	3,635.14	2,515	136,837	4		
Grand Rapids 15fr	39,164	138,096	5,709.44	2,674	278,269	9		
Grattan 1fr	10,616		424.64	550	17,168	1		
Grattan 5fr		1,934	58.02		1,934	1		
Lowell 1fr	73,901	19,565	3,542.99	5,309	150,695	4		
Nelson 5fr	44,745	8,356	2,040.48	923	108,786	3		
Nelson 6		3,002	90.06		3,002	1		
Nelson 7fr	461	894	45.26	131	3,121	1		
Nelson 9fr	2,470	15,143	553.09	171	20,355	1		
Oakfield 3fr		5,139	154.17		5,139	1		
Paris 6fr	359,717		14,388.68	4,809	502,320	5		
Paris 12fr	132,026	25,865	6,056.99	4,206	264,941	3		
Plainfield 3		3,679	110.37		3,679	1		
Plainfield 9fr	36,871	17,773	2,008.03	3,494	115,123	3		
Plainfield 16fr	13,607	132,050	4,505.78	2,147	165,399	7		
Solon 4		11,019	330.57		11,019	1		
Solon 6fr		4,614	138.42		4,614	1		
Solon 8		3,049	91.47		3,049	1		
Sparta 2fr	18,895	145,023	5,106.49	1,117	200,475	13		
Spencer 1fr	2,442		97.68		6,363	1		
Spencer 2		1,573	47.19		1,573	1		
Tyrone 4fr	42,106	41,317	3,302.07		150,756	1		34,632
Tyrone 8fr	11,847		473.88	367	20,380	1		
Walker 11		42,034	1,261.02		42,034	1		
Walker 16fr	65,403	50,322	4,125.78	1,359	148,413	10		
Wyoming 1fr		90,251	6,912.30	1,663	232,073	10	140,159	
Wyoming 7		77,498	2,779.02		92,634	2	15,136	

SPECIAL MILK PROGRAM July 1, 1961 to June 30, 1962 (Con't.)

	Total ½ pts. Milk with lunch	Total ½ pts. Milk without lunch	Amt. of Claim	Milk Served Adults (½ pts.)	Total Milk Purchased (½ pts.)	Schools Serving Special Milk	Vending Machine	½ pts. @ 1¢
Wyoming 8fr		192,702	5,781.06		192,702	6		
Wyoming 11	107,473	329,194	14,115.86	8,246	521,983	7		
TOTAL	2,482,153	2,506,328	179,289.43	70,396	6,581,899	169	155,295	34,632

[fol. 67]

HOT LUNCH PROGRAM July 1, 1961 to June 30, 1962

	Rate per Lunch Children	Rate per Lunch Adults	No. of Schools Serving Hot Lunch	Days Served	Average Daily Participation	Total Adults Served	Total Served Free of Reduced Cost	Total Lunches Served to Children	Amount of Claim
Algoma 1fr	.30	.35	7	164	654.2	6,045	8,982	104,697	$5,604.10
Byron Center									
Caledonia	.30	.35	2	163		3,887	1,121	40,982	2,197.03
Cascade 7fr									
Courtland 1			1	134	27.3	144	270	4,169	219.78
Courtland 3									
Courtland 5									
Gaines 3									
Grand Rapids City	.35	.40	16	175	2,555.5	44,517	43,085	436,040	23,374.53
Grand Rapids 3fr	.35	.35	2	170	169.1	2,822		28,937	1,542.11
Grand Rapids 15fr	.40	.40	3	169	574.2	4,899		98,335	5,264.27
Grattan 1fr	.30	.30	1	139	45.3	550	617	6,002	322.17
Grattan 5fr									
Lowell 1fr	.30	130	1	168	358.6	5,309	3,991	51,920	2,781.11
Nelson 5fr	.30	.35	1	165	300.0	2,363	141	54,762	2,908.97
Nelson 6									
Nelson 7fr	.25	.25	1	99-	20	108		1,635	87.58
Nelson 9fr	.35	.35	1	44	87.5	252	251	2,571	140.42
Oakfield 3fr									
Paris 6fr	.30	.35	5	158	869.2	12,247	11,988	137,794	7,335.90
Paris 12fr	.30	.35	4	169	610.9	8,691	7,353	102,844	5,604.91
Plainfield 3									
Plainfield 9fr	.25	.30	1	165	354.0	3,626	4,083	56,985	3,065.82
Plainfield 16fr	.27	.32	1	165	106.5	1,635	350	17,595	939.89
Solon 4									
Solon 6fr									
Solon 8									
Sparta 2fr	.30	.40	1	163	195.8	2,445	1,630	35,440	1,901.74
Spencer 1fr			1	157	35	297	220	3,921	211.47
Spencer 2									
Tyrone 4fr	.35	.40	1	164	195.3	2,433	1,477	31,901	1,700.47
Tyrone 8fr			1	149	55	552	300	8,166	439.19
Walker 11									
Walker 16fr			3	165	65.1	2,821	235	31,329	1,661.48
Wyoming 1									
Wyoming 7									
Wyoming 8fr									
Wyoming 11			2	165	469.9	10,416	1,079	77,070	4,114.19
TOTAL			56		7748.4	116,059	87,173	1,333,095	71,417.13

June 1962

CHILDREN RECEIVING SPECIAL EDUCATION & SERVICES
IN KENT COUNTY -- 1961-62

DISTRICT	Psychological Services	Speech Therapy	Visiting Teachers	Teacher-Counselor	Vision	Orthopedic	Hearing	Grand Rapids Multiple or Health	Vision	Burton Orthopedic	Eastern Oral Deaf	Sigsbee Homebound	Mentally Handicapped Type "C"	Lower El.	Upper El. Type "A"	Junior Type "A"	Senior-Occup. Type "A"	Type "A"	TOTALS 1962	TOTALS 1958
ADA (0) 6fr Farrell1																			0	0
ALGOMA (291) 1fr Rockford	54	132	40	1	2	2	2				3	3	22	11*		15	4		291	51 38[1]
ALPINE (0) 10 Boyd																			0	0
BYRON (123) 1fr Byron Community	17	55	24								4	1	1	12	3	2	4		123	58
CALEDONIA (87) 1fr Caledonia Community	15	39	8			1	1				1	1	2	9	1	3	4	2	87	33
CASCADE (1) 7fr Snow			1																1	2

[fol. 69]

June 1962

CHILDREN RECEIVING SPECIAL EDUCATION & SERVICES IN KENT COUNTY -- 1961-62

DISTRICT	Psychological Services	Speech Therapy	Visiting Teachers	Teacher-Counselor: Vision	Teacher-Counselor: Orthopedic	Teacher-Counselor: Hearing	Grand Rapids: Multiple or Health	Grand Rapids: Vision	Grand Rapids: Burton Orthopedic	Grand Rapids: Eastern Oral Deaf	Grand Rapids: Sigsbee	Homebound	Mentally Handicapped: Type "C"	Mentally Handicapped: Lower El.	Mentally Handicapped: Upper El. Type "A"	Mentally Handicapped: Junior Type "A"	Mentally Handicapped: Senior-Occup. Type "A"	Mentally Handicapped: Type "A"	TOTALS 1962	TOTALS 1958
COURTLAND (10)																				
1 Stinson					1								1						2	2
3 Courtland Ctr.		2											1						3	3
5 Benham		1													2				3	1
6fr Evans					1												1		2	2
GAINES (2)																				
3 DOdge				2															2	3
GRAND RAPIDS (371)																				
1 City				1														3	4	112[1]
3fr East Grand Rapids	4		14	6	19					1	5	1	1				7**	1**		185	96
15fr Forest Hills	28		99	36				1	1	1	3	1		2	2	6	2			182	48
GRATTAN (26)																				
1fr Grattan Ctr.	7		10	2				1					1		2					23	1
5fr Talbot	1																			1	1
6fr Ashley	1			1																2	0

[fol. 70]

June 1962

CHILDREN RECEIVING SPECIAL EDUCATION & SERVICES
IN KENT COUNTY -- 1961-62

DISTRICT	Psychological Services	Speech Therapy	Visiting Teachers	Teacher-Counselor: Vision	Teacher-Counselor: Orthopedic	Teacher-Counselor: Hearing	Grand Rapids: Multiple or Health	Grand Rapids: Vision	Grand Rapids: Burton Orthopedic	Grand Rapids: Eastern Oral Deaf	Grand Rapids: Sigsbee Homebound	Mentally Handicapped: Type "C"	Mentally Handicapped: Lower El.	Mentally Handicapped: Upper El. Type "A"	Mentally Handicapped: Junior Type "A"	Mentally Handicapped: Senior-Occup. Type "A"	Mentally Handicapped: Type "A"	TOTALS 1962	TOTALS 1958
LOWELL (131)																			
1fr Lowell		33	48	26		3		2	1		1	3		2		5	6	1	131	33 11[1]
6 Mapes (0)																			0	0
NELSON (138)																			
2 Punches		1		1		1						1							4	0
3fr East Nelson			2																2	5
4fr White Dove		1	3	1															5	12
5fr Cedar Springs		15	37	15				1			1	1		4		10		1	85	44
6 Nelson Center		1		1															2	0
7fr Huggard		5												2					7	0
9fr Sand Lake[2]		8	20	1	1			1						2					33[2]	17[2]
OAKFIELD (3)																			
3fr Horton		1		1				1											3	1

[fol. 71]

June 1962

CHILDREN RECEIVING SPECIAL EDUCATION & SERVICES IN KENT COUNTY -- 1961-62

DISTRICT	Psychological Services	Speech Therapy	Visiting Teachers	Teacher-Counselor: Vision	Teacher-Counselor: Orthopedic	Teacher-Counselor: Hearing	Grand Rapids: Multiple or Health	Grand Rapids: Vision	Grand Rapids: Burton Orthopedic	Grand Rapids: Eastern Oral Deaf	Grand Rapids: Sigsbee	Mentally Handicapped: Homebound	Mentally Handicapped: Type "C"	Mentally Handicapped: Lower El. Type "A"	Mentally Handicapped: Upper El. Type "A"	Mentally Handicapped: Junior Type "A"	Mentally Handicapped: Senior-Occup. Type "A"	TOTALS 1962	TOTALS 1958
PARIS (542)																			
6fr Godwin	69	145	50	1	2	3	4	1	6	2	9			1	12 1**			306	66
8 East Paris		3																3	0
12fr Kentwood	46	107	27			1	1		3	2	7	10	7	10	8	4		233	47
PLAINFIELD (261)																			
3 Wilson	1	4																5	0
9fr Comstock Park	21	40	15						1		1	6	3	3 3**	4	1		98	33
16fr Northview	24	80	22	1		1	1		6	1	3 1**	6	4	4	4			158	0 36[1]
SOLON (14)																			
4 Christian Hill	2		1								1							4	3
6fr Pioneer	4													1				5	0
8 Hoag		5																5	1

[fol. 72]

June 1962

CHILDREN RECEIVING SPECIAL EDUCATION & SERVICES IN KENT COUNTY -- 1961-62

DISTRICT	Psychological Services	Speech Therapy	Visiting Teachers	Teacher-Counselor: Vision	Teacher-Counselor: Orthopedic	Teacher-Counselor: Hearing	Grand Rapids: Multiple or Health	Grand Rapids: Vision	Grand Rapids: Burton Orthopedic	Grand Rapids: Oral Deaf Eastern	Sigsbee	Homebound	Mentally Handicapped: Type "C"	Mentally Handicapped: Lower Elem. Type "A"	Mentally Handicapped: Upper Elem. Type "A"	Mentally Handicapped: Junior Type "A"	Mentally Handicapped: Senior-Occup. Type "A"	Type "A"	TOTALS 1962	TOTALS 1958
SPARTA (194)																				
2fr Sparta Area	29	83	45			3		2				4	10	10	7		1		194	79
SPENCER (2)																				
1fr Griswold													1		1				2	0
2 Victory																			0	2
TYRONE (106)																				
4fr Kent City	8	38	18	1	2		1					1	7	2	4		1		84	53 31
8fr Casnovia	5	14	1				1						1						22	11
VERGENNES (4)																				
1 Alton																			0	0
4fr Moseley																			0	0
5 Water			1																1	0
7 Bennett		2	1																3	0

June 1962

CHILDREN RECEIVING SPECIAL EDUCATION & SERVICES IN KENT COUNTY -- 1961-62

DISTRICT	Psychological Services	Speech Therapy	Visiting Teachers	Teacher-Counselor: Vision	Teacher-Counselor: Orthopedic	Teacher-Counselor: Hearing	Grand Rapids: Multiple or Health	Grand Rapids: Vision	Grand Rapids: Burton Orthopedic	Grand Rapids: Oral Deaf Eastern	Grand Rapids: Sigsbee	Mentally Handicapped: Homebound	Mentally Handicapped: Type "M"	Mentally Handicapped: Lower Elem. Type "A"	Mentally Handicapped: Upper Elem. Type "A"	Mentally Handicapped: Junior Type "A"	Mentally Handicapped: Senior-Occup. Type "A"	Mentally Handicapped: Type "A"	TOTALS 1962	TOTALS 1958
WALKER (195)																				
11 Fairview			17	8							1		1			2	2		31	21
16fr Kenowa Hills	39		65	38	1		1	4			2	1	4	6	1	1	1		164	21[1]
WYOMING (881)																				
1fr Grandville	51		119	20	1		4	1	1		10	2	2	5	2	9	15	2	244	71 11[1]
2fr*** Newhall	33		104						2		2	4	3	10	6	1		4	169	54
4*** Wyoming Park	8		40	1	1		1		2		2	1	6	4			6	1	73	7
7 Godfrey-Lee	14		51		1				1		5	1	3	3		3	5		97	11
8fr Kelloggsville	25		89	19			2	1	1		2	4	2	6	7	4	6	10	2	180	66
9*** Rogers	13		84		1			1	1		2		1	3	4	2	5		1	118	46
TOTAL SERVED (County)	587		1694	446	10		12	19	25		16	53	29	70 1**	139	59	96 11**	86 1**	28	3582	1216

* Combined lower & upper "A" rooms
** County children served in Grand Rapids Schools
*** Consolidation: Wyoming 2 - 4 - 9 to Wyoming 11 (Jan. 16, 1962)
1 Combined totals of schools annexed or consolidated to new districts
2 Sand Lake to Montcalm County

EXHIBIT "F" TO COMPLAINT.

U. S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS
WASHINGTON 25, D.C.
669 Federal Building
Detroit 26, Michigan

IN REPLY REFER TO:

January 31, 1963

Mr. Roger Anderson, Attorney
1107 Michigan National Bank Building
Grand Rapids 2, Michigan

Dear Mr. Anderson:

This is to certify that Report PC (1) 24A, U.S. Census of Population, Number of Inhabitants, lists the following population figures for Kent County, Michigan and its Minor Civil Divisions. The figures reflect population as of April 1, 1960.

KENT COUNTY 363,187

Ada twp	2,887	Nelson twp	2,455
Algoma twp	2,485	*Cedar Springs village	935
Alpine twp	4,764	*Sand Lake village	394
Bowne twp	1,181	Oakfield twp	1,471
Byron twp	6,036	Paris twp	19,235
Caledonia twp	2,752	Plainfield twp	11,680
*Caledonia village	739	Rockford city	2,074
Cannon twp	2,525	Solon twp	2,422
Cascade twp	3,333	*Cedar Springs village	833
Courtland twp	1,555	Sparta twp	5,247
East Grand Rapids city	10,924	*Sparta village	2,749
Gaines twp	6,120	Spencer twp	1,014
Grand Rapids city	177,313	Tyrone twp	2,383
Grand Rapids twp	16,738	*Casnovia village	184
Grandville city	7,975	*Kent City village	617
Grattan twp	1,346	Vergennes twp	945
Lowell city	2,545	Walker twp	16,381
Lowell twp	1,567	Wyoming city	45,829

If this office can be of further help to you, please do not hesitate to write.

Sincerely yours,

Robert A. Jerke
Regional Director

HAY:mdo

*Included in Township totals.

[fol. 74]

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UNITED STATES OF AMERICA

The State of Michigan

DEPARTMENT OF STATE

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, James M. Hare, Secretary of State of the State of Michigan and Custodian of the Great Seal thereof, Do Hereby Certify that

the attached is a true photographic copy of certification from the U.S. Department of Commerce Bureau of the Census, dated October 30, 1962, relative to the population of the area annexed to Grand Rapids from Paris Township, effective December 31, 1962, and the total population of the City of Grand Rapids as of December 31, 1962, which was filed in this office under date of November 2, 1962.

[fol. 75]

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol, in the City of Lansing, this

31st day of January

A.D. 1963

Secretary of State.

Form 69-01-81
(5-15-60)

U.S. DEPARTMENT OF COMMERCE

BUREAU OF THE CENSUS

WASHINGTON

October 30, 1962

I hereby certify; That according to the official count of the returns of the EIGHTEENT CENSUS OF THE UNITED STATES, on file in the Bureau of the Census, the population o the city of Grand Rapids, County of Kent, State of Michigan; as of April 1, 1960, was 177,313; that on the same date the population of the areas annexec to the city between April 1, 1960 and June 30, 1962 was 24,284; that the population of the areas annexed from Paris township to be effective December 31, 1962 was 180; and that the population of the area comprising the city of Grand Rapids and the areas annexed to the city between April 1, 1960 and June 30, 1962 and the areas annexed from Paris township, to be effective December 31, 1962, was 201,777, as of April 1, 1960.

Richard M. Scammon, *Director, Bureau of the Census.*

[fol. 76]

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WAM:sh (6) 2-7-63

EXHIBIT "G" TO COMPLAINT [fol. 77]

SCHOOL CENSUS AS OF MAY 31, 1962

(Extract From Annual Report Of The Kent County Board Of Education - June 30, 1962 - page 17)

District	Under 5	5 to 19	Total
Ada 6fr	9	28	37
Alpine 10	37	68	105
Cascade 7fr	27	60	87
Courtland 1	47	106	153
Courtland 3	29	73	102
Courtland 5	29	62	91
Courtland 6fr	19	44	63
Gaines 3	17	40	57
Grattan 5fr	50	143	193
Grattan 6fr	29	51	80
Lowell 6	25	32	57
Nelson 2	14	52	66
Nelson 3fr	18	71	89
Nelson 4fr	20	85	105
Nelson 6	16	37	53
Nelson 7fr	11	47	58
Oakfield 3fr	33	111	144
Paris 8	43	138	181
Plainfield 3	24	52	76
Solon 4	60	132	192
Solon 6fr	20	55	75
Solon 8	15	43	58
Spencer 1fr	18	60	78
Spencer 2	9	35	44
Vergennes 1	14	16	30
Vergennes 4fr	15	68	83
Vergennes 5	20	49	69
Vergennes 7	29	62	91
Vergennes 11	10	34	44
Walker 1	8	21	29
Total	715	1,875	2,590
Total Census for Kent County			154,665

Thirty school districts with a census of 2,590 have 56% of the voting strength and have 1.67% of the total school census.

Grand Rapids with a census of 76,302 has 1/53 of the voting strength and has 49.33% of the total school census.

[fol. 78]

UNITED STATES OF AMERICA

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Civil Action No. 4480

JAMES SAILORS, et al., Plaintiffs,

WILLIAM A. DUTHLER and ANNA M. DUTHLER; HARVEY A. DUTHLER and EDNA M. DUTHLER, and THE CITY OF GRAND RAPIDS, a municipal corporation, Intervening Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, et al., Defendants,

ATTORNEY GENERAL OF THE STATE OF MICHIGAN, Intervening Defendant.

COMPLAINT OF INTERVENING PLAINTIFFS—Filed June 19, 1964

Now come the intervening plaintiffs, William A. Duthler and Anna M. Duthler, Harvey A. Duthler and Edna M. Duthler, pursuant to authorization granted by the order of this court entered June 4, 1964 and allege as follows:

1. This action arises under the 14th Amendment to the United States Constitution, and Sections 1981 and 1983 of Title 42 of the United States Code, as hereinafter more fully appears. Jurisdiction is conferred on this court by

[File endorsement omitted]

28 USC Sections 1321 and 1343, and the amount in controversy exceeds Ten thousand dollars ($10,000.00).

[fol. 79] 2. Prior to December 31, 1962 the intervening plaintiffs, William A. Duthler and Anna M. Duthler, husband and wife, and Harvey A. Duthler and Edna M. Duthler, husband and wife, were resident-electors and freeholders of the Township of Paris, and school electors of the Kentwood Public Schools, a school district, but were annexed on that date to the City of Grand Rapids pursuant to resolutions of the Board of Supervisors of the County of Kent (see certified copies of resolutions of the Kent County Board of Supervisors dated December 6, 1961 and attached to the original complaint in this cause as Exhibits A and B) and a favorable vote of the electors of the areas annexed (see certified copy of report of County Canvassers attached to the original complaint in this cause as Exhibit C) held on February 19, 1962.

3. In annexing to the City of Grand Rapids said intervening plaintiffs were thereby annexed to the School District of the City of Grand Rapids, a school district of the second class, and said intervening plaintiffs became at that time electors of the City of Grand Rapids and school electors of the School District of the City of Grand Rapids and continued to be same until "de-annexed" by action of the defendant The Board of Education of the County of Kent.

4. The defendant Kentwood Public Schools, a school district, did on the 1st day of January, 1963 adopt a resolution requesting The Board of Education of the County of Kent to summarily and without voter approval detach the areas so annexed as set forth in paragraph 2 and in Exhibit C including the areas in which the intervening plaintiffs herein reside. (A copy of said resolution is attached to the original complaint in this cause as Exhibit D.)

[fol. 80] 5. Thereafter and commencing on January 29, 1963 the individual defendants acting in their capacity as

The Board of Education of the County of Kent accepted such resolution of the defendant, Kentwood Public Schools, a school district, and in pursuance of Act 269 of the Public Acts of 1955 as amended commenced to receive information in support thereof and announced their intention to render a decision thereon on February 25, 1963 which would violate the intervening plaintiffs' civil rights.

6. That Chapter 8 part I of the School Code of 1955 as amended (specifically Section 15.3294 of Michigan Statutes Annotated; Section 340.294 of the Compiled Laws of 1948 and recent amendments thereto, namely Section 294 a of the Public Acts of 1962 which took effect March 28, 1963 being Section 294 a of the School Code Compiled Laws '48 Section 340.294 a; MSA Section 15.3294 [1]) and Chapter 5 Part II of the School Code as most recently amended being Section 15.3291 of the Michigan Statutes Annotated and Section 340.291 of the Compiled Laws of 1948 and the amendments thereto effective March 28, 1963 being known as Section 291 a and MSA Section 15.3291 [1] and known as Compiled Laws '48 Section 340.291 a, are violative of the provisions of the 14th Amendment of the Constitution of the United States and the provisions of Section 1981 and 1983 of Title 42 of the United States Code.

7. That Chapter 8 Part I of the School Code of 1955 (Michigan Statutes Annotated Section 15.3294 and including the latest amendment Section 15.3294 [1] also known as Section 340.294 and Section 340.294 a of the Compiled Laws of 1948) providing for the election of members of the County Board of Education is in direct violation of the Constitution of the United States and Title 42, Sec- [fol. 81] tions 1981 and 1983 of the United States Code; that said Act provides for a unit system for the election of county school board members which invidiously discriminates against the intervening plaintiffs and others similarly situated, said intervening plaintiffs being school electors of the plaintiff school district at the time said "de-

annexation proceedings" were begun; that the unit vote which plaintiff school district has at the annual meeting does not bear a reasonable relation to its population; that as a result the school district and the intervening plaintiffs herein who are school electors thereof and all others similarly situated, are denied the equal protection of the laws; that said invidious discrimination consists of the following:

(a) That under the provisions of said Act (MSA Section 15.3294 and Section 15.3294 [1]) each school district in the County of Kent including primary and fourth class has 1 vote irrespective of its size, population, valuation, school census or membership; that in the County of Kent there were on July 1, 1961 56 school districts, each having 1 vote (see Section H page 4 of the last annual report of the Kent County Board of Education dated June 30, 1962 and attached to the original complaint herein as Exhibit E); that on information and belief at the present time there are 41 school districts within the County of Kent; that the total population of the County of Kent as of April 1, 1960 is 363,187 and the population of the plaintiff school district was on January 1, 1963 201,777; that the plaintiff school district has 55% of the population of the County of Kent but has only 1 vote in the election of county school board members who pass upon problems and finances vital to the existence of [fol. 82] plaintiff school district and the intervening plaintiffs who were prior to said "de-annexation proceedings" residents of said district. (See certified copy of the official census attached to the original complaint in this cause as Exhibit F.)

(b) That under the provisions of said Act, Michigan Statutes Annotated 15.3294 and 15.3294 [1] the vote of each primary, fourth class, third class and second class school district is given equal weight in the elec-

tion and selection of members of the Kent County Board of Education notwithstanding a great disparity in the populations of the several school districts more particularly as follows:

(1) That Ashley School District No. 6 fractional, Grattan Township, has a population of 145 people and 1 unit vote; that Boyd School District No. 10, Alpine Township, has a population of 191 people and thereby has 1 unit vote; that Dodge School District No. 3, Gaines Township, has a population of 117 people entitling it to 1 unit vote; that Hoag School District No. 8, Solon Township, has a population of 111 people entitling it to 1 unit vote; that Nelson Center School District No. 6, Nelson Township, has a population of 99 people thereby entitling it to 1 unit vote while the School District of the City of Grand Rapids has a population of 201,777 and has but 1 unit vote.

(c) That plaintiff school district of which the intervening plaintiffs were freeholders and taxpayers as of [fol. 83] January 1, 1963 has a property valuation for the fiscal year July 1, 1960 to June 30, 1961 of $605,528,136.00 out of a total county-wide property valuation of $1,147,515,379.00 (see pages 14 and 15 of Exhibit E attached to the original complaint in this cause) or 52.77% of the total valuation of said county. But said school district had but 1 unit vote out of 56 districts (July 31, 1961) in electing county school board members who are vested with authority under the provisions of Chapter 5 Part II of the School Code of 1955 MSA Sections 15.3461 and 15.3465; Sections 340.461 to 340.465 of the Compiled Laws of 1948 to emasculate said school district; valuation percentages of plaintiff school district as compared to total valuation of the county has remained approximately the same as for the fiscal year of July 1, 1960 to June 30, 1961.

(d) That on May 31, 1962 the total school census for the County of Kent was 154,665 of which the plaintiff school district of which the intervening plaintiffs were residents prior to the commencement of the "de-annexation proceedings" had 76,302 (see page 17 of Exhibit E attached to the original complaint in this cause) and as of that date the plaintiff school district had 49.3 of the total school census of the 52 school districts of the county in existence on that date, but under the provisions of Chapter 8 Part I, Compiled Laws 340.291-340.294 MSA Section 15.3291-15.3294 it had but 1/52 (viz. 1.92%) of the voting strength as of May 31, 1962. The new amendments to these provisions of the School Code continue and perpetuate the invidious discrimination.

[fol. 84] (e) That the plaintiff school district, of which the intervening plaintiffs were residents and parents of school age children at the time that "de-annexation proceedings" were begun has a myriad of problems unlike those of most of the primary and fourth class school districts (of which there were 49 as of September 29, 1961, see page 20 of Exhibit E attached to the original complaint in this cause); that their solution depends upon the understanding and sympathetic appreciation and knowledge of those who pass upon its fate, but that its representation on the Kent County Board of Education is determined by the unit votes of school districts having less than 200 students in their districts (see page 17 of Exhibit E attached to the original complaint in this cause).

(f) The voting strength of the intervening plaintiffs is in such contrast with that of the electors in districts having less than 200 students as to discriminate invidiously and dilute their right to express themselves at the ballot box (see Exhibit G an abstract from Exhibit E attached to the original complaint in this cause) and deprives them of an impartial tribunal in determining matters of great consequences.

8. That the transfer provisions of the School Code of 1955, Chapter 5 Part II (MSA Section 15.3461; Section 340.461 of Compiled Laws of 1948) are invalid, void and unconstitutional as an illegal, improper and arbitrary delegation of legislative power to a subdivision of the state because no standard, guideline or yardstick has been provided for it to follow; that said Board of Education of the [fol. 85] County of Kent through which the individual defendants render decisions, illegally constituted through and by the unit vote of a minority of population and valuation is invested with unlimited authority to transfer at will by whim and caprice valuable properties of the intervening plaintiffs to another school district as long as it does not detach more than 10% of the taxable valuation of the individual plaintiffs entire school district at one time.

9. That the transfer provisions of the School Code of 1955, Chapter 5 Part II (Section 15.3461 MSA) are invalid and void and unconstitutional and are in violation of the due process clause of the 14th Amendment because the state legislature does not possess the power to force residents and property into adjoining municipalities and school districts without preserving to the residents and electors thereof the right to the ballot; that said intervening plaintiffs joined plaintiff school district through voting franchise; the State of Michigan through its legislature does not have the unrestricted power to delegate to illegally constituted tribunals the right to reorganize, destroy or contract political and educational districts through the exercise of their caprice.

10. That Chapter 8 Part I of the School Code of 1955 (MSA Section 15.3294 and Section 15.3294 [1]; Section 340.294 and 340.294 a of the Compiled Laws of 1948) and more particularly the transfer provisions of said School Code (Chapter 5 Part II, Section 15.3461 of Michigan Statutes Annotated; Section 340.461 of Compiled Laws of 1948) contain invalid delegations of legislative power, in-

vesting administrative officers with arbitrary power, in contravention of the provisions of due process and equal protection clauses of the Constitution of the United States as contained in the 14th Amendment thereof.

[fol. 86] 11. The transfer provisions of the School Code of 1955 Chapter 5 Part II are invalid, void and unconstitutional and in violation of the due process clause of the Federal Constitution in that no reasonable notice to interested parties is required or provided for, and no provision is made for an opportunity for interested parties to be heard or offer evidence; no provision is made for cross-examination of adverse witnesses; no provision is made for witnesses to be sworn or exhibits to be properly marked and identified; no provision of any kind is made for reasonable rules of procedure to guarantee interested parties a fair hearing; all of which denies the intervening plaintiffs of their rights to procedural due process of law.

12. Intervening plaintiffs are without an adequate remedy of law.

13. On Monday, February 25, 1963 the individual defendants met in special session as the defendant The Board of Education of the County of Kent and passed a resolution to transfer the Breton Avenue area, the Fuller-44th Street area, the Kendall area and the Alger area from plaintiff school district to the defendant Kentwood Public Schools, and a certified copy of said resolution is attached to the original complaint as amended and marked Exhibit H. The action taken by the defendant The Board of Education of the County of Kent on February 25, 1963 was arbitrary, capricious, invalid and in violation of the due process clause of the Federal Constitution because said defendant board failed and refused to state the reasons, make findings of fact, give explanation or in any way set forth any basis for the action taken as shown from said Exhibit H.

[fol. 87] 14. On Wednesday, June 5, 1963, the State Board of Education entered an order affirming the action

of The Board of Education of the County of Kent except for the property owned and occupied by the individual plaintiffs herein and 2 other property owners. (See Exhibit I attached to the amended complaint.) This action reverses the free choice exercised by intervening plaintiffs at the ballot box and returns them against their will to defendant Kentwood School District. This action forces intervening plaintiffs to pay an increased amount of money in school taxes and will result in higher school taxes for all other property owners within "de-annexed" areas. With regard to intervening plaintiffs, William A. Duthler and wife, the result of the transfer is to fractionalize their home. Their home and frontage on Kalamazoo Avenue is sent back to Kentwood, the remainder of their parcel to the east remains in Grand Rapids. The action taken by the State Board of Education on June 5, 1963 was arbitrary, capricious, invalid and in violation of the due process clause of the Federal Constitution because said Board failed and refused to state reasons, make findings of fact, give explanation or in any way set forth any basis for the action taken as shown by Exhibit I.

Wherefore intervening plaintiffs pray for the following relief:

I. That the court enter a declaratory judgment that the transfer provisions of the School Code of 1955, and namely Chapter 5 Part II of said Act are unconstitutional, invalid, void and a nullity, and that an injunction issue accordingly enjoining the individual defendants from exercising any jurisdiction or authority to purport to act by virtue of said invalid and unconstitutional provisions.

[fol. 88] II. That the court enter a declaratory judgment that the provisions of Chapter 8 Part I of the School Code of 1955 and especially Section 294 thereof, and the new amendment known as Section 294 a thereof are invalid and unconstitutional and declare that the defendant the Board of Education of the County of Kent of which the indi-

vidual defendants are members is unconstitutionally constituted and to enter an injunction as follows:

(a) Enjoining the Board of Education of the County of Kent and the individual defendants who are members thereof from exercising any jurisdiction or authority whatever until the further order of this court.

(b) Enjoining any subsequent election by virtue of said void and invalid constitutional provisions.

(c) Enter a mandatory injunction requiring that all elections hereafter for members of the Board of Education of the County of Kent or under its new name, The Board of Education of the Kent Intermediate School District be held and conducted by at large elections in the County of Kent.

(d) Enter an injunction declaring that all offices as member of the Kent County Board of Education or under its new name, Kent Intermediate School District are hereby vacant and requiring new at large elections to fill such vacancies.

III. That the court enter a declaratory judgment that the transfer ordered June 5, 1963 by the State Board of Education is void and a complete nullity and that the City of Grand Rapids one of the intervening plaintiffs herein [fol. 89] be directed to collect school taxes on the property in the transferred area for and on behalf of plaintiff school district and when collected to remit same to plaintiff school district.

IV. That the court enter a declaratory judgment that the transfer ordered by the defendant The Board of Education of the County of Kent on February 25, 1963 transferring the Breton Avenue area, the Fuller-44th Street area, the Kendall area and the Alger area is void and a complete nullity and of no force and effect whatsoever.

V. That the intervening plaintiffs be granted such other further and additional relief to which they may be entitled.

Dated: June 18th, 1964.

Dutchess, Mika, Miles, Meyers, Merdzinski & Snow, By Wendell A. Miles, Attorneys for Intervening plaintiffs, Business address: 311 Waters Building, Grand Rapids, Michigan 49502.

McDonald & Anderson, By Roger D. Anderson, Of Counsel for Intervening plaintiffs, Business address: 1107 Mich. Nat'l Bank Bldg., Grand Rapids, Michigan 49502.

[fol. 90]

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

[Title omitted]

ANSWER OF DEFENDANT KENTWOOD PUBLIC SCHOOLS—
Filed August 11, 1964

In answer to the complaint as amended, defendant Kentwood Public Schools says:

1. All of the allegations of paragraph 1 of the complaint, which are the allegations of jurisdiction, are denied on the ground that the matters constituting the claims for relief set forth in the complaint as amended do not raise a Federal question.

2. In answer to paragraph 2 of the complaint, this defendant admits, on information and belief, that prior to De-

[File endorsement omitted]

cember 31, 1962, plaintiffs James Sailors, Loretta Sailors, Seymour Koning, Mildred Koning, Grazzi Mullay and Rosalie Mullay were resident-electors and freeholders of the Township of Paris and school electors of this defendant, Kentwood Public Schools. This defendant also admits that on December 31, 1962 the territory upon which said plaintiffs resided, with other territory described in Exhibits A, B, C and D, attached to the complaint, was detached from Paris Township, Kent County, Michigan and annexed to the City of Grand Rapids, Michigan, pursuant to the provisions of the Michigan home rule act, being Act No. 279 of the Public Acts of Michigan of 1909, as amended; 1948 Compiled Laws of Michigan, § 117.1 et seq.; Michigan Statutes Annotated, § 5.2071 et seq., particularly §§ 6, 7, 8 and 9 thereof, as amended. This defendant denies that said plaintiffs individually as resident-electors and freeholders of the Township of Paris or as school-electors of this defendant "were annexed on that date to the City of Grand Rapids."

[fol. 91] 3. In answer to paragraph 3 of the complaint, this defendant admits that on December 31, 1962 the territory described in Exhibits A, B, C and D, attached to the complaint, by such annexation to the City of Grand Rapids, under said home rule act, became a part of the School District of Grand Rapids, by virtue of § 143, chapter 5, part 1 of the school code of 1955, as amended, being § 340.143 of the 1948 Compiled Laws of Michigan and MSA, § 15.3143, which is as follows:

> "Whenever territory shall be annexed to a city comprising a school district of the second class, such territory, by such annexation, shall become and be part of the school district of that city."

This defendant further admits that the City of Grand Rapids comprised a school district of the second class, namely, The School District of the City of Grand Rapids,

the corporate name of which is "The Board of Education of the City of Grand Rapids", plaintiff herein, under the provisions of § 154, chapter 5, part 1 of the school code of 1955.

This defendant denies that "said individual plaintiffs were thereby annexed to the School District of the City of Grand Rapids", but admits that by reason of the operation of said § 143, chapter 5, part 1 of the school code of 1955, the individual plaintiffs became electors of the City of Grand Rapids and school electors of The School District of the City of Grand Rapids.

4. In answer to paragraph 4 of the complaint, this defendant admits that on January 1, 1963, its board of education at a lawful meeting thereof, unanimously adopted the resolution, a copy of which is attached to the complaint as Exhibit D, reference to which is prayed, wherein it requested the county board of education of the County of Kent, State of Michigan, a defendant herein, to detach the territory described in Exhibits A, B and C attached to the complaint, commonly known as the Breton Avenue, Kendall and Fuller-44th Street areas, from plaintiff The Board of Education of the City of Grand Rapids, a second class school district, also known as The School District of the City of Grand Rapids, and attach it to this defendant school district, pursuant to the provisions of chapter 5, part 2 of the school code of 1955, as amended, which is the chapter of said school code authorizing the transfer of territory between school districts, being § 340.461 of the Compiled Laws of 1948, et seq., as amended and MSA § 15.3461 et seq., as amended.

[fol. 92] Also, this defendant admits that on January 1, 1963 its board of education at a lawful meeting thereof unanimously adopted a resolution requesting the county board of education of the County of Kent, State of Michigan, a defendant herein, to detach certain other described territory, known as the Alger Street area, from The Board of Education of the City of Grand Rapids, and attach it to

this defendant school district (see Exhibit D attached to the complaint), pursuant to the provisions of said chapter 5, part 2 of the school code of 1955, as amended; such territory in said Paris Township located and being within the boundaries of this defendant school district, having been detached from said Paris Township and annexed to the City of Grand Rapids by the affirmative majority vote of the legislative bodies of said township and city, under the provisions of § 9 of said home rule act, as amended.

In further answer to paragraph 4 of the complaint, this defendant says that its board of education by said resolutions adopted January 1, 1963 invoked the plenary power of defendant, the Board of Education of the County of Kent, to carry out one of the delegated functions granted to it by the legislature of the State of Michigan, under the Constitution of the State of Michigan, namely, the transfer of territory between school districts, pursuant to chapter 5, part 2 of the school code of 1955.

Further, this defendant says that the control of the Michigan public school system is a State matter delegated and lodged in the legislature of the State of Michigan by the Constitution of the State of Michigan and that the policy of the state has been to retain control of its school system, to be administered throughout the state under state laws by local state agencies organized with plenary powers to carry out the delegated functions given it by the legislature. This defendant says further that the authority of the legislature of the State of Michigan to alter boundaries of school districts may be delegated without the consent of the inhabitants of the territory annexed or the municipality to which it is annexed, or even against its express protest. This defendant says further that neither the general electors in the City of Grand Rapids or the school electors therein nor the electors of said Paris Township or the school electors of this defendant school district had a right to vote at any time on the transfer of territory requested by this defendant and that the legislature of the State of [fol. 93] Michigan is the only body which could have given

such right, which the legislature had not done. This defendant further says that this is the constitutional and statutory law of the State of Michigan as enunciated by its Supreme Court and court of last resort in *Lansing District v. State Board of Education*, 367 Michigan 591, decided September 10, 1962.

5. In answer to paragraph 5 of the complaint, this defendant admits that after due notice was given as provided by § 462 of the school code of 1955, defendant the Board of Education of the County of Kent held meetings January 29, 30, 31, February 5 and 6, 1963 at which sworn testimony was taken for and against such transfers of territory requested by this defendant, the transcript of which was introduced, received in evidence and marked Exhibit 1 at the hearing held before this court March 1, 1963, reference to which is prayed. This defendant further admits that at the meeting held by defendant Board of Education of the County of Kent February 6, 1963, the president announced the intention of said board to render a decision on February 25, 1963.

This defendant specifically denies that any decision by defendant the Board of Education of the County of Kent could or would violate any civil rights of the individual plaintiffs, because they had none under the Constitution and laws of the State of Michigan or under the Constitution or laws of the United States.

6. All of the allegations of paragraph 6 of the complaint are denied.

Specifically, this defendant denies that either § 294 of the school code of 1955, being § 340.294 of the Compiled Laws of 1948 and MSA § 15.3294, providing for the election of members of county boards of education in the State of Michigan, or chapter 5, part 2 of the school code of 1955, as amended, being § 340.291 of the Compiled Laws of 1948 and § 15.3291 MSA, wherein the legislature of the State of Michigan granted power to county boards of education to transfer territory between school districts, in any manner

whatever violate the privileges or immunities clause, the due process clause or the equal protection clause of § 1 of the Fourteenth Amendment to the Constitution of the United States. This defendant further says that sections 2, 3, 4 and 5 of the Fourteenth Amendment to the Constitution of the United States are irrelevant.

[fol. 94] This defendant further says that plaintiff, The Board of Education of the City of Grand Rapids, as a municipal corporation created by the State of Michigan for the better ordering of government, has no privileges or immunities under the Constitution of the United States or the Constitution of the State of Michigan which it may invoke in opposition to the will of its creator.

This defendant further says that § 1981 Title 42 of the United States Code is not violated, because there is no allegation in the complaint that either the individual plaintiffs or The Board of Education of the City of Grand Rapids have been deprived of the rights and benefits "enjoyed by white citizens".

This defendant further says that § 1983 Title 42 of the United States Code is not violated, because the individual plaintiffs have not been deprived "of any rights, privileges, or immunities secured by the Constitution and laws" of the United States and plaintiff, The Board of Education of the City of Grand Rapids, under the allegations of the complaint as amended, has no rights, privileges, or immunities secured by the Constitution and laws of the United States.

7. In answer to paragraph 7 and paragraph 7 (a) through (g) of the complaint, this defendant admits the statistical allegations contained in paragraph 7 (a), 7 (b), 7 (c), 7 (d) and in Exhibits E, F and G, attached to the complaint, but denies all other allegations therein contained on the grounds averred in paragraphs 4, 5 and 6 hereof.

In further answer to paragraph 7 and paragraph 7 (a) through (g), this defendant says that said chapter 8, part 1 of the school code of 1955, as amended, in creating county school districts, constitutes a delegation of executive power by the legislature of the State of Michigan, in the exercise

of its plenary power of control of the public school system of Michigan, lodged in the legislature by the Constitution of Michigan. The grant of excessive power to county boards of education is contained in § 297, chapter 8, part 1 of the school code of 1955 as amended, being § 340.297 of the Compiled Laws of 1948 and MSA § 15.3297, reference to which is prayed.

This defendant further says that there is no relationship whatever between the apportionment of a state legislature, under the prevailing doctrine of "one man, one vote", and the exercise by the legislature of the State of Michigan of [fol. 95] the plenary power of control over the public schools of the State of Michigan, under the Constitution of the State of Michigan, in the method of selecting members of a county board of education to supervise and control county school districts under the provisions of § 292 and § 294 of the school code of 1955.

Further, this defendant denies that either chapter 8, part 1, of the school code of 1955 or § 294 of the school code of 1955 constitute a denial of the equal protection of the law under the Constitution of the United States and denies that said method of selecting members of county boards of education invidiously discriminates against the individual plaintiffs or any persons who are school electors of plaintiffs' school district.

This defendant further says that neither the individual plaintiffs nor the school electors of the School District of the City of Grand Rapids have an absolute right to vote for members of county boards of education under the Constitution and laws of the State of Michigan and that having no such absolute right to vote are not denied the equal protection of the laws contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

8. All of the allegations of paragraph 8 of the complaint are denied, on the grounds previously averred in this answer. This defendant further says that the delegation of power to county boards of education to transfer terri-

tory between school districts without the right to vote thereon was a lawful delegation by the Michigan legislature under the Constitution of Michigan and no Federal question is raised by such delegation (*Lansing District* v. *State Board of Education*, 367 Mich. 591 and *Hunter* v. *Pittsburgh*, 207 US 161).

9. All of the allegations of paragraph 9 of the complaint are denied. This defendant says further that in respect to the transfer of territory between school districts, the State of Michigan is supreme, and the Michigan legislature, conforming its actions to the Constitution of the State of Michigan, may do as it will, unrestrained by any provisions of the Constitution of the United States (*Hunter* v. *Pittsburgh*, 207 US 161 and *Attorney General* v. *Lowrey*, 131 Mich. 639, affirmed 199 US 233). This defendant further says that neither the individual plaintiffs nor the plaintiff school dis-
[fol. 96] trict have any property right whatever in the territory or property, real or personal, of a school district in Michigan.

10. All of the allegations of paragraph 10 of the complaint are denied on the grounds previously averred in this answer.

11. All of the allegations of paragraph 11 of the complaint are denied on the grounds previously averred in this answer and also on the ground that the procedure on the transfers alleged in the complaint was in conformity with the provisions of chapter 5, part 2 of the school code of 1955, as amended. (See Exhibit 1 offered and received in evidence at the hearing before this Court March 1, 1963).

12. All of the allegations of paragraph 12 of the complaint are denied, except the allegation that defendant the Board of Education of the County of Kent was expected to render a decision on said transfers, on the 25th day of February, 1963.

Wherefore, This defendant says that plaintiffs are without remedy in this Court and prays for judgment in its

favor and against the defendants dismissing the action on the ground that the Court lacks jurisdiction over the subject matter and because the complaint fails to state a claim against defendants upon which relief can be granted.

13. The allegations of paragraph 13 of the complaint, added by amendment filed February 27, 1963, are admitted. This defendant further says that on February 15, 1963 the Honorable W. Wallace Kent, United States District Judge, entered an order restraining defendant The Board of Education of the County of Kent, the individual members of said board, their agents, servants, employees and attorneys, from assuming jurisdiction and authority of the question of detaching the areas referred to in Exhibit D (attached to the complaint) from the School District of the City of Grand Rapids and attaching the same to defendant Kentwood Public Schools; from conducting any further hearings in connection with the same and from rendering a decision or making any order in connection with the transfer petition filed by this defendant and pending before defendant the Board of Education of the County of Kent. On motion of this defendant, said Honorable W. Wallace Kent revoked and set aside said temporary restraining [fol. 97] order February 25, 1963 at 3:45 o'clock p.m. and thereafter the resolution of transfer, Exhibit H attached to paragraph 13 of the amendment to the complaint, was adopted.

This defendant denies that plaintiffs are entitled to the relief prayed for in paragraph V of plaintiffs' prayer for relief added by said amendment.

14. In answer to paragraph 14 of the complaint, added by amendment filed August 22, 1963, this defendant admits that on Wednesday, June 5, 1963, the State Board of Education entered the order, Exhibit I attached thereto, and that the valuation of the territory transferred was in excess of $4,000,000.00. This defendant further admits that Alexander Hamilton school, a modern, well maintained elementary school with 14 classrooms, is located on such

territory and is a valuable asset to this defendant school district. The other allegations are denied as being irrelevant and immaterial.

This defendant denies that plaintiffs are entitled to the relief prayed for in paragraphs VI and VII added to the complaint by said amendment filed August 22, 1963.

15. In answer to paragraph 14 of the complaint, added by amendment filed March 9, 1964, this defendant denies the allegations thereof and repeats that neither the individual plaintiffs nor the plaintiff board of education have any property right whatever in the territory transferred by action taken by defendant The Board of Education of the County of Kent, February 25, 1963, and that such action was in conformity with the procedural requirements of chapter 5, part 2 of the school code of 1955, as amended.

16. In answer to paragraph 15 of the complaint, added by amendment filed March 9, 1964, this defendant denies the allegations contained therein on the same ground averred in paragraph 15 thereof and on the ground that the State Board of Education not being a party to this action, this Court cannot render judgment against it.

Wherefore, This defendant prays that:

1. The action be dismissed on the ground that the Court lacks jurisdiction over the subject matter.

2. The action be dismissed because the complaint, as amended, fails to state a claim against defendants upon which relief can be granted.

3. The action be dismissed on the ground that the indi- [fol. 98] vidual plaintiffs have neither standing nor claim, because the territory upon which they reside is now a part of the territory of plaintiff's school district under said order of The State Board of Education entered June 5, 1963 (Exhibit I attached to the amended complaint).

4. The action be dismissed on the ground that plaintiff's school district, as a municipal corporation created by the

State of Michigan for the better ordering of government, has no privileges or immunities under the Constitution of the United States which it may invoke in opposition to the will of its creator.

5. *In the alternative,* if the Court holds that defendant the Board of Education of the County of Kent is malapportioned as alleged, which is denied, then this Court enter a final order denying plaintiffs any injunctive relief whatever, interlocutory, permanent or mandatory, touching on the legality or validity of said action taken February 25, 1963 by defendant the Board of Education of the County of Kent and said action taken June 5, 1963 by the State Board of Education, on the grounds that:

(a) The action taken February 25, 1963 by defendant the Board of Education of the County of Kent was taken by de facto officers and a de facto governmental body and is legal and valid in all respects.

(b) The action taken June 5, 1963 by the State Board of Education, which is not a party to this suit, was taken by a de jure body, constituted by § 6, article XI of the 1908 Constitution of the State of Michigan, the 4 members of which were elected at large by the people of the State of Michigan and its said action, taken June 5, 1963, was a duty prescribed by law under § 467 of the school code of 1955, as amended, being § 340.467 of the 1948 Compiled Laws of Michigan and MSA § 15.3467, and is legal and valid in all respects, appeal therefrom to the Supreme Court of Michigan not having been taken by plaintiffs within the time prescribed by law.

August 11, 1964.

Strawhecker and McCargar, Attorneys for Defendant, Kentwood Public Schools, Kent County, Michigan, By Paul O. Strawhecker, Of Counsel, 637 Michigan Trust Building, Grand Rapids, Michigan 49502, Telephone: 458-1485.

[fol. 99]

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Civil Action No. 4480

[Title omitted]

ANSWER OF DEFENDANT KENTWOOD PUBLIC SCHOOLS TO THE COMPLAINT OF INTERVENING PLAINTIFFS WILLIAM A. DUTHLER, ANNA M. DUTHLER, HARVEY A. DUTHLER AND EDNA M. DUTHLER—Filed August 11, 1964

In answer to the complaint of intervening plaintiffs William A. Duthler, Anna M. Duthler, Harvey A. Duthler and Edna M. Duthler, filed September 5, 1963, defendant Kentwood Public Schools says:

1-11. In answer to paragraphs 1 to 11 inclusive of the complaint, this defendant incorporates by reference its answers to paragraphs 1 to 11 inclusive of the original complaint filed herein.

12. The allegation of paragraph 12 is denied.

13. The answer of this defendant to paragraph 13 of the complaint is hereby incorporated by reference as the answer to this paragraph.

14. In answer to paragraph 14, this defendant admits that on Wednesday, June 5, 1963, the State Board of Education entered the order Exhibit 1 attached to the original complaint, as amended August 22, 1963. All other allegations are denied for the reasons and on the grounds

[File endorsement omitted]

averred in this defendants' answers to the original complaint, as amended. This defendant further says that at the annexation elections held February 19, 1962, under the home rule act, the question submitted to the electors was:

> "Shall territory in the Township of Paris, Kent County, Michigan popularly known as (Breton Avenue area, Kendall area and Fuller-44th Street area) be annexed to the City of Grand Rapids, Kent County, Michigan?"

[fol. 100] and that the intervening individual plaintiffs did not vote and had no right to vote on the question whether such territory should be detached from this defendant school district and attached to plaintiff school district, such detachment and attachments having been accomplished by operation of law, under § 143 of the school code of 1955. This defendant further says that the intervening individual plaintiffs had no right to vote on the subsequent transfer of territory by actions of defendant the Board of Education of the County of Kent February 25, 1963 and the State Board of Education June 5, 1963.

Wherefore, This defendant prays that:

1. The complaint of the intervening defendants be dismissed on the ground that the Court lacks jurisdiction over the subject matter.

2. The complaint of the intervening defendants be dismissed, because it fails to state a claim against defendants upon which relief can be granted.

3. *In the alternative,* if the Court holds that defendant the Board of Education of the County of Kent is malapportioned as alleged, which is denied, then this Court enter a final order denying any injunctive relief whatever, interlocutory, permanent or mandatory, touching on the legality or validity of the action taken February 25, 1963 by de-

fendant the Board of Education of the County of Kent and the action taken June 5, 1963 by the State Board of Education, on the grounds that:

(a) The action taken February 25, 1963 by defendant the Board of Education of the County of Kent was taken by de facto officers and a de facto governmental body and is legal and valid in all respects.

(b) The action taken June 5, 1963 by the State Board of Education, which is not a party to this suit, was taken by a de jure body, constituted by § 6, article XI of the 1908 Constitution of the State of Michigan, the 4 members of which were elected at large by the people of the State of Michigan and that said action was a duty prescribed by law under § 467 of the school code of 1955, as amended, being § 340.467 of the 1948 Compiled Laws of Michigan and MSA § 15.3467, and is legal and valid in all respects, appeal therefrom not having been taken within the time prescribed by law.

Dated: August 11, 1964.

Strawhecker and McCargar, Attorneys for Defendant, Kentwood Public Schools, Kent County, Michigan, By Paul O. Strawhecker, Of Counsel, 637 Michigan Trust Building, Grand Rapids, Michigan 49502.

[fol. 101]

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

[Title omitted]

ANSWER OF INTERVENING DEFENDANT FRANK J. KELLEY, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, TO THE AMENDED COMPLAINT OF PLAINTIFFS—Filed September 29, 1964

In answer to the complaint, as amended, Intervening Defendant Frank J. Kelley, Attorney General of the State of Michigan, says:

1. In answer to the allegations contained in paragraph 1 of the complaint, he denies all of them on the ground that the matters constituting the claims for relief set forth therein do not raise a federal question.

2. In answer to paragraph 2 of the complaint, the Intervening Defendant admits, on information and belief, that prior to December 31, 1962, plaintiffs James Sailors, Loretta Sailors, Seymour Koning, Mildred Koning, Grazzi Mullay and Rosalie Mullay were resident-electors and freeholders of the Township of Paris and school electors of defendant Kentwood Public Schools. The Intervening Defendant also admits that on December 31, 1962 the territory upon which said plaintiffs resided, with other territory described in Exhibits A, B, C and D, attached to the complaint, was detached from Paris Township, Kent County,

[File endorsement omitted]

Michigan and annexed to the City of Grand Rapids, Michigan, pursuant to the provisions of the Michigan home rule act, being Act 279, PA 1909, as amended, being CL 1948 §117.1 et seq.; MSA §5.2071 et seq., particularly sections 6, 7, 8 and 9 thereof, as amended. The Intervening Defen- [fol. 102] dant denies that said plaintiffs individually as resident-electors and freeholders of the Township of Paris or as school-electors of this Intervening Defendant "were annexed on that date to the City of Grand Rapids."

3. In answer to paragraph 3 of the complaint, the Intervening Defendant admits that on December 31, 1962 the territory described in Exhibits A, B, C and D, attached to the complaint, by such annexation to the City of Grand Rapids, under said home rule act, became a part of the School District of Grand Rapids, by virtue of section 143, Chapter 5, Part 1 of the School Code of 1955, as amended, being CL 1948 §340.143; MSA §15.3143, which is as follows:

> "Whenever territory shall be annexed to a city comprising a school district of the second class, such territory, by such annexation, shall become and be part of the school district of that city."

The Intervening Defendant further admits that the City of Grand Rapids comprised a school district of the second class, namely, the School District of the City of Grand Rapids, the corporate name of which is "The Board of Education of the City of Grand Rapids," plaintiff herein, under the provisions of section 154, Chapter 5, Part 1 of the School Code of 1955.

The Intervening Defendant denies that "said individual plaintiffs were thereby annexed to the School District of the City of Grand Rapids," but admits that by reason of the operation of said section 143, Chapter 5, Part 1 of the School Code of 1955, the individual plaintiffs became electors of the City of Grand Rapids and school electors of The School District of the City of Grand Rapids.

4. In answer to the allegations contained in paragraph 4, Intervening Defendant admits that the defendant Kentwood Public Schools adopted a resolution requesting the board of education of the county of Kent to detach certain areas from the plaintiff school district and to attach it to the Kentwood Public Schools in accordance with law, and [fol. 103] respectfully submits that no voter approval was required by law; Intervening Defendant denies that the Kentwood Public Schools adopted a resolution requesting the board of education of the county of Kent to act summarily.

5. In answer to the allegations contained in paragraph 5 of the complaint, Intervening Defendant admits that the board of education of the county of Kent acted upon resolution of the defendant Kentwood Public Schools in accordance with law, but denies that any action taken by the board of education of the county of Kent in that regard violated the civil rights of any individual plaintiffs.

6. In answer to the allegations contained in paragraph 6 of the complaint, Intervening Defendant denies each and every one of them and respectfully submits that section 294 of Act 269, PA 1955, was repealed by Act 190, PA 1962, and section 291 of Act 269, PA 1955 was repealed by Act 190, PA 1962. Intervening Defendant submits further that the aforesaid provisions and the successor provisions, being sections 291a and 294a, added by Act 190, PA 1962, are in accord with the 14th Amendment of the Constitution of the United States. Intervening Defendant further respectfully submits that the plaintiff board of education of the city of Grand Rapids has no rights or privileges protected by the 14th Amendment and denies that the individual plaintiffs have been deprived of any rights or benefits guaranteed by the Constitution of the United States.

7. In answer to the allegations contained in paragraph 7 and paragraph 7(a) through (g) of the complaint, the

Intervening Defendant on information and belief admits the statistical information contained in paragraph 7(a), 7(b), 7(c), 7(d), and in Exhibits E, F and G attached to the complaint, but denies all other allegations therein contained; that sections 291-294 of Act 269, PA 1955, have been repealed by Act 190, PA 1962. Intervening Defendant respectfully submits that plaintiff school district has no constitutional right to elect members of the board of education of Kent County, except as the legislature give them [fol. 104] the right, and that the individual plaintiffs have no constitutional right to elect members of the Kent County board of education.

8. In answer to the allegations contained in paragraph 8, Intervening Defendant denies each and every one of them, and respectfully submits that the Michigan Supreme Court has upheld the constitutionality of section 461 of Act 269, PA 1955, in *Lansing School District* v. *State Board of Education*, 367 Mich. 591.

9. In answer to the allegations contained in paragraph 9, the Intervening Defendant denies each and every one of them and respectfully submits to this court that the provisions found in section 461 of Act 269, PA 1955, are in accord with the Michigan Constitution as declared by the highest court in the State. Intervening Defendant further submits that neither the plaintiff school district nor the individual plaintiffs have any property right whatever in the territory or property, real or personal, of a school district in Michigan.

10. In answer to the allegations contained in paragraph 10 of the complaint, Intervening Defendant denies each and every one of them.

11. In answer to the allegations contained in paragraph 11, Intervening Defendant denies each and every one of them, and respectfully submits that the provisions of Act 269, PA 1955, in question are in accord with the Michigan Constitution and the Constitution of the United States.

12. In answer to the allegations contained in paragraph 12, Intervening Defendant denies each and every one of them, except the allegation that defendant, the board of education of the county of Kent, was expected to render a decision on the 25th day of February, 1963, which, on information and belief, Intervening Defendant admits.

[fol. 105] Wherefore, Intervening Defendant respectfully submits that the court lacks jurisdiction over the subject matter, and because the complaint fails to state a claim against the defendants upon which relief can be granted prays for judgment in its favor and against the plaintiffs dismissing the action.

13. In answer to the allegations contained in paragraph 13 of the complaint, added by amendment filed February 27, 1963, upon information and belief, Intervening Defendant admits the same, and further says that on February 15, 1963 the Honorable W. Wallace Kent, United States District Judge, entered an order restraining defendant the Board of Education of the County of Kent, the individual members of said board, their agents, servants, employees and attorneys, from assuming jurisdiction and authority of the question of detaching the areas referred to in Exhibit D (attached to the complaint) from the School District of the City of Grand Rapids and attaching the same to defendant Kentwood Public Schools; from conducting any further hearings in connection with the same and from rendering a decision or making any order in connection with the transfer petition filed by the defendant and pending before defendant Board of Education of the County of Kent. On motion of the defendant Kentwood Public Schools, said Honorable W. Wallace Kent revoked and set aside said temporary restraining order February 25, 1963 at 3:45 p.m. and thereafter the resolution of transfer, Exhibit H attached to paragraph 13 of the amendment to the complaint, was adopted. Intervening Defendant denies that plaintiffs are entitled to the relief prayed for in paragraph V of plaintiffs' prayer for relief added by said amendment.

14. In answer to the allegations contained in paragraph 14 of the complaint, added by amendment filed August 22, 1963, Intervening Defendant admits the allegation as it relates to the action of the State Board of Education. Intervening Defendant denies all the remaining allegations and submits that plaintiff school district obtained the Alexander Hamilton school building as a result of an election to annex [fol. 106] certain territory to the city of Grand Rapids and did not pay $1.00 for the Alexander Hamilton school district when the area in question became detached from the Kentwood Public School District. Intervening Defendant denies that the plaintiffs are entitled to the relief prayed for in paragraphs VI and VII, added to the complaint by same amendment filed August 22, 1963.

15. In answer to the paragraph 14 of the complaint, added by amendment filed March 4, 1964, Intervening Defendant denies the allegations contained therein, and respectfully submits that neither the individual plaintffs nor the plaintiff board of education have any property right whatever in the territory transferred by action taken by the board of education of the county of Kent, and that such action was in conformity with statutory requirements, Act 269, PA 1955, as found in Chapter 5, Part 2, thereof.

16. In answer to paragraph 15 of the complaint, added by amendment March 9, 1964, Intervening Defendant denies the allegation contained therein for reasons that are heretofore stated, and additionally, upon the ground that the State Board of Education not being a party to this action, this court cannot render judgment against it.

Wherefore, Intervening Defendant prays that the action be dismissed on the ground that it fails to state a claim against defendant upon which relief can be granted; that this court lacks jurisdiction over the subject matter; that the individual plaintiffs have neither standing nor claim because the territory upon which they reside is now a part of the territory of plaintiff school district under the order

of the State Board of Education entered June 5, 1963; that the plaintiff school district has no privileges or immunity under the Constitution of the United States which it may [fol. 107] invoke in opposition to the rule of its creator.

Respectfully submitted,

Frank J. Kelley, Attorney General of the State of Michigan, Intervening Defendant, By Eugene Krasicky, Assistant Attorney General.

Dated: September 28, A.D. 1964.

[fol. 108] Affidavit of Service (omitted in printing).

[fol. 109]

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

[Title omitted]

ANSWER OF INTERVENING DEFENDANT FRANK J. KELLEY, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, TO THE COMPLAINT OF INTERVENING PLAINTIFFS WILLIAM A. DUTHLER, ANNA M. DUTHLER, HARVEY A. DUTHLER AND EDNA M. DUTHLER—Filed September 29, 1964

In answer to the complaint of the Intervening Plaintiffs William A. Duthler, Anna M. Duthler, Harvey A. Duthler and Edna M. Duthler, filed September 5, 1963, Intervening Defendant Frank J. Kelley, Attorney General of the State of Michigan, says:

1-11. In answer to the allegations contained in paragraphs 1-11, inclusive, of the complaint of the said Intervening Plaintiffs, the Intervening Defendant incorporates by reference his answers to paragraphs 1-11, inclusive, of the original complaint filed herein.

[File endorsement omitted]

12. In answer to the allegations contained in paragraph 12, the Intervening Defendant denies the allegations contained therein.

13. In answer to the allegations contained in paragraph 13 of the complaint of the Intervening Plaintiffs, Intervening Defendant incorporates by reference his answer to paragraph 13 of the original complaint.

14. In answer to the allegations contained in paragraph 14, Intervening Defendant admits that the State Board of Education entered an order which is identified as Exhibit 1, attached to the original complaint, and respectfully sub-
[fol. 110] mits that none of the Intervening Plaintiffs chose to appear before the State Board of Education to advise them of their position relative to the property transfer; that until the Intervening Plaintiffs filed their complaint the State Board of Education had no knowledge of their wishes in this regard; and that the State Board of Education acted in accordance with lawful authority reposed in them. All other allegations are denied.

Wherefore, This Intervening Defendant prays that:

1. The complaint of the Intervening Plaintiffs be dismissed on the ground that the court lacks jurisdiction over the subject matter.

2. The complaint of the Intervening Plaintiffs be dismissed because it fails to state a claim against defendants upon which relief can be granted.

3. *In the alternative,* if the court holds that defendant the Board of Education of the County of Kent is malapportioned as alleged, which is denied, then this court enter a final order denying any injunctive relief whatever, interlocutory, permanent or mandatory, touching on the legality or validity of the action taken February 25, 1963 by defendant the Board of Education of the County of Kent and the action taken June 5, 1963 by the State Board of Education, on that grounds that:

(a) The action taken February 25, 1963 by defendant the Board of Education of the County of Kent was taken by de facto officers and a de facto governmental body and is legal and valid in all respects.

(b) The action taken June 5, 1963 by the State Board of Education which is not a party to this suit, was taken by a de jure body, constituted by Section 6, Article XI of the [fol. 111] 1908 Constitution of the State of Michigan, the four members of which were elected at large by the people of the State of Michigan and that said action was a duty prescribed by law under section 467 of the School Code of 1955, as amended, being §340.467 of the 1948 Compiled Laws of Michigan and MSA §15.3467, and is legal and valid in all respects, appeal therefrom not having been taken within the time prescribed by law.

Frank J. Kelley, Attorney General of the State of Michigan, Intervening Defendant, By Eugene Krasicky, Assistant Attorney General.

Dated: September 28, A.D. 1964.

[fol. 112] Affidavit of Service (omitted in printing).

[fol. 113]

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

[Title omitted]

ANSWER OF THE BOARD OF EDUCATION OF THE COUNTY OF KENT—Filed April 22, 1965

Comes Now the above named defendant The Board of Education of the County of Kent, and adopts as its answer

to plaintiff's complaint as amended the answer of defendant Kentwood Public Schools.

The Board of Education of the County of Kent further shows that it no longer exists as the Board of Education of the County of Kent but instead is now the Intermediate School District of Kent County.

Vander Veen, Freihofer & Cook, By George J. Cook, Attorneys for defendant, Board of Education of the County of Kent; Business Address: 111-G Waters Building, Grand Rapids, Michigan.

Dated: April 21, 1965.

[fol. 114]

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

[Title omitted]

STIPULATION OF FACTS—Filed May 3, 1966

Counsel for the respective parties hereby stipulate the following facts:

1. This cause was commenced February 15, 1963 seeking an injunction and declaratory relief. The complaint alleges that this action arises under the Fourteenth Amendment to the United States Constitution and §§ 1981 and 1983 of Title 42 of the United States Code and that jurisdiction is conferred by §§ 1331 and 1343 of Title 28 of the United States Code.

[File endorsement omitted]

2. Prior to December 31, 1962, plaintiffs James Sailors, Loretta Sailors, Seymour Koning, Mildred Koning, Grazzi Mullay and Rosalie Mullay and intervening plaintiffs William A. Duthler, Anna M. Duthler, Harvey A. Duthler and Edna M. Duthler were resident-electors and freeholders of Paris Township, Kent County, Michigan and were school electors of defendant Kentwood Public Schools, Kent County, Michigan, a school district of the fourth class, under the provisions of chapter 3, part 1 of the school code of 1955, as amended (Act No. 269 of the Public Acts of Michigan of 1955, as amended; § 340.51 of the 1948 Compiled Laws of Michigan, et seq; Michigan Statutes Annotated § 15.3051 et seq).

3. Plaintiff The Board of Education of the City of Grand Rapids is, has continued to be and is now a school district of the second class under the provisions of chapter 5, part 1 of the school code of 1955, as amended (CL 1948 § 340.141, [fol. 115] et seq; MSA § 15.3141, et seq), located within the city limits of intervening plaintiff, The City of Grand Rapids.

4. Intervening plaintiff The City of Grand Rapids is a home rule city, under Act No. 279 of the Public Acts of Michigan of 1909, as amended (CL 1948, § 117.1, et seq; MSA § 5.2071, et seq).

5. At the time of commencement of this action, February 15, 1963, defendant The Board of Education of the County of Kent was the board granted supervision and control of the county school district, under chapter 8, part 1 of the school code of 1955, as amended (CL 1948 § 340.291, et seq; MSA § 15.3291, et seq), the powers and duties of which were set forth in § 297, chapter 8, part 1 of the school code of 1955, as amended (CL 1948 § 340.297; MSA 15.3297), which section is attached hereto and marked Exhibit 1.

(a) At annual school elections held in Kent County in 1957, the provisions of §§ 309 to 327, inclusive of the school code of 1955, as amended (CL 1948 §§ 340.309 to 340.327,

inclusive; MSA §§ 15.3309 to 3327, inclusive) with reference to special education became effective and from 1957 defendant The Board of Education of the County of Kent, since March 28, 1963 known as "The Board of Education of the Kent Intermediate School District" has levied each year an ad valorem tax of one-half mill for such purpose. The annual amounts of such levy for the operation of such special education program are set forth in Exhibit 2.

6. Act No. 190 of the Public Acts of 1962, effective March 28, 1963, repealed all of chapter 8, part 1 of the school code of 1955 as amended with reference to county school districts and in lieu thereof added 45 new sections to stand as §§ 291a to 328a of the school code of 1955 (CL 1948 §§ 340.291a to 328a; MSA §§ 15.3291(1) to 15.3328(1). Under this statute the name of defendant The Board of Education of the County of Kent became "The Board of Education of the Kent Intermediate School District". The special education provisions became §§ 307a to 324a (CL 1948 §§ 340.307a to 340.324a; MSA §§ 15.3307(1) to 15.3324 [fol. 116] (1). The powers and duties of the board of education of an intermediate school district are set forth in § 298a of the new act (CL 1948, § 340.298a; MSA § 15.3298 (1), which section is attached hereto and marked Exhibit 3.

(a) Commencing with the year 1963, defendant, as The Board of Education of the Kent Intermediate School District, under said Act No. 190 PA 1962, levied ad valorem taxes for operations on a county-wide basis, in addition to the one-half mill for special education (see Exhibit 2), as follows: 1963, $92,781.94 (.08 mill) and 1964, $100,938.85 (.085 mill).

7. Defendant Kentwood Public Schools was created for the purpose of providing kindergarten through 12th grade education, July 1, 1958, by the consolidation of 6 elementary school districts, one of them being the so called Alexander Hamilton School District, upon which the modern 14-classroom Alexander Hamilton School was located,

under the provisions of chapter 3, part 2 of the school code of 1955, as amended (CL 1948 § 340.401, et seq; MSA § 15.3401, et seq, see Exhibit D attached to the complaint). Since the creation of defendant Kentwood Public Schools July 1, 1958, and prior to the annexation and transfer of the 4 areas involved in this litigation, there were 9 detachments of territory from defendant Kentwood Public Schools by annexation under the home rule act (one of such annexations having been voted before, but did not become effective until after defendant Kentwood Public Schools was created) and the operation of § 143 of the school code of 1955, with the 1962 state equalized valuation of $10,935,523, $12,726,860 in 1963 and $14,018,810 in 1964 (see Exhibit 4 which is a district map of defendant Kentwood Public Schools showing the 9 detachments of territory, which are numbered 1 through 9 on the legend). These 9 detachments resulted in an average valuation per public school child of $11,151.00 in 1962 as compared with $14,350.00 prior to such detachments.

(a) Commencing with 1958 through December 31, 1962 there were 35 annexations of territory to intervening plaintiff The City of Grand Rapids under the home rule act and by operation of § 143 of the school code of 1955 (CL 1948, § 340.143; MSA § 15.3143) which provided as follows:

> [fol. 117] "Whenever territory shall be annexed to a city comprising a school district of the second class, such territory, by such annexation, shall become and be part of the school district of that city;"

such territory, by such annexations, became a part of plaintiff school district. During this period the valuation of all the areas annexed to plaintiff school district totaled $89,277,206 and such areas contained 4,403 children in the public schools resulting in an average valuation per public school child of $20,274 as compared with $22,426 per child in plaintiff school district prior to such annexations. See Exhibit 5 for map showing growth of Grand Rapids and

plaintiff school district during this period and Exhibit 6 for map showing all the school districts within Kent County as of July 1, 1963.

8. The 1962 Michigan legislature in effect repealed § 143 of the school code of 1955 by Act No. 177 PA 1962, approved by the Governor of the State of Michigan May 17, 1962, but, as the act was not given immediate effect, it did not take effect until March 28, 1963.

9. On proper petitions to the Board of Supervisors, Kent County, Michigan, signed by the requisite number of qualified electors and freeholders residing in the City of Grand Rapids and in Paris Township, and after consideration by the Board of Supervisors, the Supervisors ordered that special elections be held in said city and township February 19, 1962 for the purpose of submitting to the electors in the City of Grand Rapids and in Paris Township the following 3 questions:

> "Shall territory in the Township of Paris, Kent County, Michigan, popnlarly known as Breton Avenue area, be annexed to the City of Grand Rapids, Michigan?"
>
> "Shall territory in the Township of Paris, Kent County, Michigan, popularly known as Kendall area, be annexed to the City of Grand Rapids, Kent County, Michigan?"
>
> "Shall territory in the Township of Paris, Kent County, Michigan, popularly known as Fuller-44th area, be annexed to the City of Grand Rapids, Kent County, Michigan?"

The individual plaintiffs and individual intervening plaintiffs understood that by voting annexation to the City of Grand Rapids, under the home rule act, the territory [fol. 118] annexed upon which they resided would become a part of plaintiff school district.

The resolutions of the board of supervisors provided that if the annexations were accomplished, they would be effective as of December 31, 1962, at 12:01 a.m.

All of the annexation proceedings were regular and were taken under the provisions of §§ 6, 7, 8 and 9 of the home rule act, as amended. The votes were favorable on the 3 proposed annexations. See Exhibits 7, 8 and 9. See Exhibits 10, 11 and 12 showing territory involved in the 3 annexations.

10. The Alger Street area, located in Paris Township within the boundaries of defendant Kentwood Public Schools, and uninhabited, was detached from Paris Township and annexed to the City of Grand Rapids by the affirmative vote of the legislative bodies of said township and city, under the provisions of § 9 of the home rule act, as amended and became effective December 26, 1962. See Exhibit 13 for territory involved. Prior to such detachment, plaintiff school district had obtained appraisals on and had negotiation with the owners of a part of such area, intending purchase thereof for a school site.

11. The legal descriptions of the 4 areas are found in Exhibit D attached to the complaint.

12. December 31, 1962, by the annexation of the so called Breton Avenue area, the Kendall area, the Fuller-44th Street area and the Alger area (December 26, 1962) to the City of Grand Rapids, under the home rule act, those areas became a part of plaintiff school district, by virtue of said § 143 of the school code of 1955, as amended (CL 1948 § 340.143; MSA § 15.3143).

13. By virtue of the operation of said § 143 of the school code of 1955 the individual plaintiffs and the individual intervening plaintiffs became electors of the City of Grand Rapids and school electors of plaintiff school district.

[fol. 119] 14. January 1, 1963 the board of education of defendant Kentwood Public Schools unanimously adopted resolutions requesting defendant the Board of Education of

the County of Kent to detach the Breton Avenue, Kendall, Fuller-44th Street and Alger Street areas from plaintiff The Board of Education of the City of Grand Rapids and attach the areas to defendant Kentwood Public Schools, pursuant to the provisions of chapter 5, part 2 of the school code of 1955, as amended, being the chapter of the school code providing for the transfer of territory between school districts (CL 1948 § 340.461 et seq.; MSA § 15.3461 et seq.). See Exhibit D attached to the complaint.

The individual plaintiffs and intervening individual plaintiffs, residents of the areas affected and/or taxpayers, were not consulted concerning their wishes or desires on this proposed detachment. Neither were the school electors of defendant Kentwood Public Schools consulted concerning their wishes or desires when the Alger area was annexed by joint resolution. The other three areas were annexed by petition and popular vote of the electors of Paris Township and Grand Rapids, under the home rule act. Kentwood School electors residing outside Paris Township boundaries had no right to vote on the question and were not consulted as to their wishes or desires. See Exhibits 7, 8 and 9, for tabulation of votes.

15. Defendant The Board of Education of the County of Kent accepted the transfer petitions, and after posting and publishing notice as required by § 462 of the school code of 1955 (CL 1948 § 340.462; MSA § 15.3462) held meetings January 29, 30, 31, February 5 and 6, 1963, at which meetings plaintiff The Board of Education of the City of Grand Rapids, defendant Kentwood Public Schools and defendant The Board of Education of the County of Kent were represented by counsel, sworn testimony was taken for and against such transfers, cross-examination of witnesses was allowed and all proceedings were taken stenographically by a court reporter, the transcript of which proceedings were introduced, received and marked Exhibit 1 at the hearing held before this Court March 1, 1963. At the final meeting held by defendant The Board of

Education of the County of Kent February 6, 1963, the president announced the intention of the board to render a decision on February 25, 1963. The individual plantiffs, [fol. 120] intervening individual plaintiffs or other resident taxpayers of such 4 areas were not personally served with notice of such meetings.

(a) At the opening of the meeting held January 29, 1963, plaintiff moved dismissal of the proceedings by defendant The Board of Education of the County of Kent on the grounds that the statute (CL 1948, §§ 340.461 to 340.467; MSA §§ 15.3461 to 15.3467) failed to guarantee due process of law and the equal protection of the laws; that the notice requirements were inadequate and violated the federal constitution and that defendant The Board of Education of the County of Kent was unconstitutionally constituted in that it is an unrepresentative body and was elected contrary to the requirements of the equal protection clause of the federal constitution. This motion was denied by defendant The Board of Education of the County of Kent. See Exhibit 1 introduced and received in evidence at the hearing before this Court March 1, 1963.

(b) At the time of the meetings mentioned above, one member of defendant The Board of Education of the County of Kent, Mary Keeler, was a member of plaintiff The Board of Education of the City of Grand Rapids and a resident of the City of Grand Rapids. At the opening of the meeting held January 29, 1963, counsel for defendant Kentwood Public Schools requested that member Mary Keeler excuse herself from participating in the meetings on the ground that she was a member of plaintiff The Board of Education of the City of Grand Rapids, which was a party to the proceedings. This she refused to do, unless the other members so requested. The other members requested that she sit (see Exhibit 1 introduced and received in evidence at the hearing before this Court March 1, 1963).

16. February 15, 1963 plaintiffs filed the complaint herein with the Honorable W. Wallace Kent, United States

District Judge, who on that date entered an order restraining defendant The Board of Education of the County of Kent, the individual members of said board, their agents, servants, employees and attorneys, from assuming jurisdiction and authority on the question of detaching the areas described in Exhibit D attached to the complaint from The School District of the City of Grand Rapids and attaching the same to defendant Kentwood Public Schools; [fol. 121] from conducting any further hearings in connection with the same and from rendering a decision or making any order in connection with the transfer petition filed by defendant Kentwood Public Schools and pending before defendant The Board of Education of the County of Kent.

17. On motion of defendant Kentwood Public Schools, the Honorable W. Wallace Kent revoked and set aside the temporary restraining order February 25, 1963 at 3:45 o'clock p.m. See Exhibit 14.

18. The evening of February 25, 1963 defendant The Board of Education of the County of Kent adopted the resolution of transfer, which is Exhibit H attached to paragraph 13 of the complaint as added by amendment filed February 27, 1963 and which is attached hereto as Exhibit 15. No reasons, conclusions, or findings of fact, either orally or in writing, were rendered.

(a) At the hearing before this Court March 1, 1963, the motion of the Attorney General of the State of Michigan to intervene as a party defendant was granted.

19. Defendant Russell Emmons, a member of defendant The Board of Education of the County of Kent, participated fully in the deliberations, made a second to the motion to transfer and voted for the transfer. At the same time, his school district (Grandville) had a like petition pending before the county board to transfer property from plaintiff school district to the Grandville School District.

Member Mary Keeler voted against the transfer resolution.

20. A county board of education is composed of 5 members elected under the provisions of § 294 of the school code of 1955, as amended (CL 1948, § 340.294; MSA § 15.3294—see also § 292 of the school code of 1955; CL 1948 § 340.292; MSA § 15.3292).

Said § 294 of the school code of 1955 was repealed by said Act No. 190 PA 1962, which became effective March 28, 1963 and §§ 294a through 294h were added. While in effect the former method of election was retained (see § 294a), §§ 294b through 294h provided for the popular election of board members on referendum either by action of the intermediate board (§ 294c) or on petition of a majority of the [fol. 122] boards of education within that intermediate school district representing more than 50% of the children on the last school census in the county district.

Sections 294c through 294h, as added by said Act No. 190 PA 1962, were amended by Act No. 290 PA 1964, effective August 28, 1964. The 1964 amendment to § 294c clarified the method of calling a referendum for the popular election of members of boards of education of intermediate school districts by the following language:

> "The board shall submit the question upon receipt of resolutions adopted by a majority of the boards of education of constituent school districts and representing more than 50% of the children on the last school census in the intermediate district."

(a) The individual defendants, as members of defendant The Board of Education of the County of Kent, who received the transfer petition of defendant Kentwood Public School and acted thereon, were residents of and were elected for terms set forth as follows:

Victor Weller
(6 years, 1963). Rockford (Algoma No. 1 Fractional)

C. B. Leaver (6 years, 1959)	Kent City (Tyrone No. 4 Fractional)
Dewey Jaarsma (6 years, 1961)	Byron (Byron No. 1 Fractional)
Russell Emmons (6 years, 1963)	Grandville (Wyoming No. 1 Fractional)
Mary Keeler (2 years, 1963)	Grand Rapids (Grand Rapids No. 1)

In 1962 Mary Keeler was elected by the remaining members of the board to fill a vacancy until the 1963 election, as authorized by both §§ 294 and 294a.

(b) Of the 5 elected members of defendant The Board of Education of the County of Kent, plaintiff school district had but one, namely, Mary Keeler, and under the provisions of both §§ 294 and 294a would not be entitled to more than 2, although plaintiff school district had and has a population in excess of all other school districts in Kent County combined.

Under the referendum provision of § 294c of said Act No. 190 PA 1962, as amended by Act No. 290 PA 1964, plaintiff school district with a majority of the population of Kent County could not, acting alone, compel such referendum.

[fol. 123] 21. Section 294 of the school code of 1955, which prescribed the method of electing members of county boards of education provided in substance that the county superintendent of schools of each county school district, by reasonable notice sent by registered mail, call a meeting of the secretaries of boards of primary and fourth class school districts and the presidents of boards in other school districts, within the jurisdiction of the county school district, at which meeting members of the county board of education were elected by a majority vote of those present. The board of any of the school districts could by resolution designate any other member of the board to represent it

at such meeting. The members of the county board of education served a term of 6 years and elections were held biennially, which meant that biennially either 2 members or 1 member were elected depending upon the number of offices expiring. Terms commenced July 1.

Section 294a under the new act, retained the substance of former § 294 with reference to such elections. Section 294a substituted notice by certified mail rather than registered mail. Section 294 provided that if a vacancy was not filled within 30 days by the majority of the remaining members, the vacancy would be filled by the county board of supervisors. Section 294a substituted the state board of education. Section 294 provided that not more than 2 members of the county board of education could be elected from any one township or city. Section 294a provides that not more than 2 members of the board shall be from the same school district unless there are fewer districts than there are positions to be filled.

September 29, 1961, there were 56 primary, fourth class, third class and one second class district (plaintiff school district) within Kent County. Through consolidations and annexations the total number of school districts within Kent County was reduced in 1964 to 39. The total population of Kent County as of the 1960 federal decennial census was 363,187. The population of plaintiff school district as of the same census, as adjusted for annexations, was 201,777 or 55.6% of the total.

(a) Ashley School District in Kent County and under the jurisdiction of defendant The County Board of Education of Kent County had a population of 145 and 1 vote. Boyd School District had a population of 191 and 1 vote; [fol. 124] Dodge School District had a population of 117 and 1 vote; Hoag School District had a population of 111 and 1 vote; Nelson Center School District had a population of 99 and 1 vote. The school District of the City of Grand Rapids had a population of 201,777 and 1 vote. For population variance ratios see Exhibit 16.

(b) Kent County had a total 1963 state equalized valuation of $1,165,923,800, of which valuation plaintiff school district had $636,758,000 or 54.6%. Kent County had a total 1964 state equalized valuation of $1,193,579,600, of which valuation plaintiff school district had $615,235,596 or 51.5%. See Exhibit 17.

(c) Kent County had a total 1963 school census (0-19) of 157,915, of which plaintiff school district had 75,863 or 48.04%. Kent County had a total 1964 school census of 160,638 of which plaintiff school district had 76,395 or 47.6%. See Exhibit 18.

(d) During the last two years, a majority of the school districts in Kent County with the smallest school census has averaged less than 2% of the total school census of Kent County. See Exhibit 19.

22. March 1, 1963 this Court held a hearing on the motions of the defendants to dismiss the complaint and other pending motions, after which it entered the order of March 4, 1963.

In substance the order of March 4, 1963 denied the motion of plaintiffs to reinstate the restraining order vacated by the Honorable W. Wallace Kent, entered February 25, 1963 and likewise denied plaintiffs' application for an interlocutory injunction at that time. Defendant's motion to dismiss the complaint was held in abeyance and the Court retained jurisdiction "awaiting the plaintiff's exercise of their administrative remedies provided by the Michigan statutes, and, if they so choose, their application to the Supreme Court of Michigan for a writ of certiorari to review the action of the State Board of Education."

23. Pursuant to § 467 of the school code of 1955, as amended (CL 1948 § 340.467; MSA § 15.3467) plaintiffs appealed the order of transfer entered February 25, 1963 by defendant The Board of Education of the County of Kent to the State Board of Education. The State Board

of Education, which is not a party to this suit, was con-
[fol. 125] stituted by § 6, article XI of the 1908 Constitution of the State of Michigan, the 4 members of which were elected at large by the people of the State of Michigan.

24. The State Board of Education, after notice to plaintiffs as appellants and defendants as appellees and having taken testimony of all persons called as witnesses by the parties and the arguments of the attorneys, entered the amended order June 5, 1963 (which is Exhibit C attached to the complaint as amended March 9, 1964) without reasons, conclusions or finding of fact. No oral or written opinion was given. See Exhibit 20. The amended order of the State Board of Education entered June 5, 1963 set aside the action of defendant The Board of Education of the County of Kent taken February 25, 1963 and ordered that the territory involved be transferred from the school district of the City of Grand Rapids to Kentwood Public Schools, except for the property owned and occupied by the individual plaintiffs, James Sailors and Loretta Sailors, his wife, Seymour Koning and Mildred Koning, his wife, and Grazzi Mullay and Rosalie Mullay, his wife, and 2 other lots owned by Louise M. Scalice and Dorothy Biermacker. See Exhibits 21 and 22. The transfer included property owned by the intervening plaintiffs and on which they reside.

The only explanation given to this Court for the exemption of the individual plaintiffs from the amended order of the State Board of Education entered June 5, 1963 was that their wish to be in plaintiff school district was granted. See statement of Assistant Attorney General Eugene Krasicky attached as Exhibit 23.

25. The territory transferred by order of the State Board of Education had a 1964 state equalized valuation of $5,369,584. The 1964 tax levy by defendant Kentwood Public Schools against such territory for all school purposes totalled $124,554.35 or a tax rate of 23.2 mills on state equalized value. The 1964 levy by plaintiff school

district against such territory totalled $84,839.43 or a tax rate of 15.8 mills. The Alexander Hamilton school building is located within the area transferred to defendant Kentwood Public Schools. By stipulation filed in this cause, dated September 10, 1964, if the transfers are voided, the operating taxes for 1964 which were collected by defendant Kentwood Public Schools will be turned over to plaintiff [fol. 126] school district and the levy made by defendant Kentwood Public Schools in 1964 for debt retirement for the 1964 bond issue will be returned to the taxpayers in the 4 areas. See the stipulation with reference to the collection and remittance of 1964 school taxes dated and filed herein September 10, 1964.

26. September 3, 1963 William A. Duthler, Anna M. Duthler, Harvey A. Duthler and Edna M. Duthler, who were, prior to December 31, 1962, resident-electors and freeholders of Paris Township, Kent County, Michigan and were school electors of defendant Kentwood Public Schools, but are now resident-electors and freeholders of the City of Grand Rapids, while school electors of defendant Kentwood Public Schools, filed a motion to intervene as parties plaintiff, which motion was granted by order of this Court entered June 4, 1964.

The intervening individual plaintiffs were not consulted concerning their wishes or desires on the transfer and had no right to vote thereon. Neither were the school electors of defendant Kentwood Public Schools consulted concerning their wishes or desires on the annexation of the Alger area. The other three areas were annexed by petition and popular vote of the electors of Paris Township and Grand Rapids. Kentwood voters outside Paris Township boundaries had no right under the home rule act to vote and were not consulted as to their wishes or desires. See exhibits 7, 8 and 9 for tabulation of votes.

27. Plaintiffs did not make application to the Supreme Court of Michigan for leave to appeal the amended order

of the State Board of Education entered June 5, 1963 and the order of the State Board of Education has become final.

28. Frank J. Kelley, Attorney General of the State of Michigan, intervening defendant herein, requested Lynn M. Bartlett, Michigan State Superintendent of Public Instruction, to conduct a survey of all of the intermediate school districts to ascertain for the past ten years the number of transfers granted, transfers modified and transfers denied for each intermediate school district. Information was also requested showing intermediate school district budgets for 1964, whether the intermediate school district is conducting a special education program and the number of tax mills voted for special education. Responses were received from the intermediate school superintendents between June 15, 1964 and July 15, 1964 and the results of [fol. 127] the survey are attached hereto, showing the information for each intermediate school district. In addition appended hereto is a map showing the intermediate school districts, including those that had been annexed and consolidated, and a tabulation of total of transfers granted, transfers modified, and transfers denied with an average of such requests for 10 years.

The survey of intermediate school districts is attached hereto as Exhibit 24, consisting of 12 pages, the map of the intermediate school districts is attached as Exhibit 25, consisting of 1 page, and the table of the summary of transfers granted, etc. is attached hereto as Exhibit 26, consisting of 2 pages.

29. Since February 25, 1963, when the ex parte temporary restraining order issued in this cause was dissolved (Exhibit 14) and defendant The Board of Education of the County of Kent ordered the transfer of the 4 areas (Exhibit 15), defendant The Board of Education of the County of Kent has exercised the powers and performed the duties granted and imposed on it by said § 297 of the school code of 1955, as amended (Exhibit 1) and since March 28, 1963 said defendant, now known as The Board

of Education of the Kent Intermediate School District, has exercised the powers and performed the duties granted and imposed on it by § 298a of the school code of 1955, as added by Act No. 190 PA 1962 (Exhibit 3).

In addition to exercising such powers and performing such duties, said defendant has entered 35 orders transferring certain territory between school districts within its jurisdiction, under the provisions of chapter 5, part 2 of the school code of 1955, as amended (CL 1948, § 340.461 et seq.; MSA § 15.3461). See Exhibit 27.

30. March 16, 1963 territory with a 1964 state equalized valuation of $14,659,195, was transferred by order of defendant The Board of Education of the County of Kent from plaintiff school district to Godwin Heights Public Schools. See item 63-4 on Exhibit 27.

May 17, 1963 territory with a 1964 state equalized valuation of $727,399, was transferred by order of defendant The Board of Education of the County of Kent from plaintiff school district to Grandville Public Schools. See item 63-9 on Exhibit 27.

[fol. 128] The territory so transferred was uninhabited and had been previously annexed to the City of Grand Rapids under the home rule act and became part of plaintiff school district under said § 143 of the school code of 1955.

Both transfers were appealed by plaintiff school district and others to the State Board of Education, which confirmed said transfers by order entered June 5, 1963 on the Godwin transfer and by order entered August 13, 1963 on the Grandville transfer. Plaintiff school district and others made applications on both transfers to the Supreme Court of Michigan for leave to appeal the orders of the State Board of Education, asserting substantially the same constitutional questions asserted in the case at bar. Briefs were filed in each case in the Supreme Court of Michigan by the appellants and appellees and the Supreme Court of Michigan denied leave to appeal, by order entered Novem-

ber 6, 1963 in the Godwin case and by order entered February 26, 1964 in the Grandville case. Appeal to the Supreme Court of the United States was not taken in either case. See supplemental motion of defendant Kentwood Public Schools to dismiss the complaint dated and filed herein March 2, 1964.

February 15, 1965 defendant The Board of Education of Kent Intermediate School District transferred territory with a 1964 state equalized valuation of $46,200 from Godwin Heights Public Schools to plaintiff school district. See item 65-1 on Exhibit 27.

Including the transfers to defendant Kentwood Public Schools the net 1964 state equalized valuation of territory detached from plaintiff school district totalled $20,709,978. With 20 public school children in membership in 1963, in said territory so detached, the 1964 state equalized valuation per membership child was $1,035,499.

31. The Alexander Hamilton School, located within the transferred area, see Exhibit 21, is .7 miles distance from the residence of plaintiffs Sailors and Koning and 2.2 miles distance from plaintiffs Malloy. The nearest Grand Rapids school to the residences of Sailors and Koning, at the time of transfer, was Shawnee Park School which was 2.7 miles distance. The nearest Grand Rapids school to the residence of the Malloys, at the time of transfer was the Alger School which was 2.7 miles distance. Since the transfer a new elementary school has been opened which is 2.1 miles distance from the residence of Sailors and Koning and 1.5 miles distance from the residence of the Malloys.

Dated: April 30, 1965

[fol. 129] For Plaintiffs and Intervening Plaintiffs:

Dutchess, Mika, Miles, Meyers, Merdzinski & Snow,
By Wendell A. Miles, Attorneys for Individual Plaintiffs and Intervening Individual Plaintiffs,
Of Counsel for Plaintiff The Board of Education

of the City of Grand Rapids, 311 Waters Building, Grand Rapids, Michigan 49502;

McDonald & Anderson, By Roger D. Anderson, Attorney for Plaintiff The Board of Education of the City of Grand Rapids, Of Counsel for Individual and Intervening Individual Plaintiffs, 1107 Michigan National Bank Building, Grand Rapids, Michigan 49502;

William J. Garlington, City Attorney for the City of Grand Rapids, Michigan, Intervening Plaintiff, City Hall, Grand Rapids, Michigan 49502.

For Defendants and Intervening Defendant:

Vanderveen, Freihofer & Cook, By George R. Cook, Attorneys for the Board of Education of the County of Kent and Victor Weller, Dewey Jaarsma, Mary I. Keeler, Russell Emmons, and C. B. Leaver, as members thereof, Suite 111-G Waters Building, Grand Rapids, Michigan 49502.

Strawhecker and McCargar, Attorneys for Defendant Kentwood Public Schools, Kent County, Michigan, By Paul O. Strawhecker, 637 Michigan Trust Building, Grand Rapids, Michigan 49502.

Frank J. Kelley, Attorney General, Intervening Defendant, By Eugene Krasicky, Assistant Attorney General, Capitol Building, Lansing, Michigan.

[fol. 130]

EXHIBIT I TO STIPULATION OF FACTS

Powers and duties of the county board of education under the provisions of § 297 of the school code of 1955, as amended (CL 1948, § 340.297; MSA § 15.3297).

SEC. 297. The powers and duties of the county board of education shall be as follows:

(a) To receive from the county treasurer such reports of delinquent taxes due school districts as this official is required by law to file with township and city clerks and to compute from such report the amount of delinquent school taxes due each school district in the county. The county treasurer of each county shall, at the time of making monthly settlements with the several township and city treasurers of the county, file with the secretary of the county board of education a statement of all delinquent school taxes which are included in the amounts sent by the county treasurer to the several township and city treasurers of the county, together with the descriptions upon which these delinquent school taxes shall have been paid. The county board of education shall, upon receipt of such statements, compute the amount of delinquent school taxes and interest thereon included in such statement that shall be due each school district of the county and shall, within 30 days from receiving the statement from the county treasurer, give notice to the secretary of each school board of the county of the amount of delinquent school tax and interest thereon that belongs to his district and which was included in the amount sent by the county treasurer to the treasurer of the township or city in which his district is located.

(b) To recommend the purchase of library books for all school libraries and of all instructional equipment in school districts not employing a superintendent of schools.

(c) To employ a county superintendent of schools and such assistants, including in its discretion a deputy, as it shall deem necessary for the best interest of the county and to fix the compensation for the same except as otherwise provided in section 300 of this act. That part of the compensation of the county superintendent of schools as is paid from county funds and the compensation of the deputy and assistants which shall include salaries and traveling expenses incurred in the discharge of their offi

cial duties and the necessary and contingent expenses of the office of the county board of education and the county superintendent of schools for printing, postage, stationery, record books, equipment, office and telephone rental, rent of rooms for teachers' or school officers' meetings, pupils' mental and achievement tests, expenses incurred in the health and social service program of the office, and elections conducted by the county board of education, shall be paid by the county treasurer after the same have been authorized by the county board of education from such amounts as may be appropriated therefor by the county board of supervisors. The county board of education shall employ and contract with for a term of not to exceed 4 years a county superintendent of schools who shall have the qualifications and perform the duties as provided in this act. On or before the close of each term, or sooner if there should be a vacancy, the superintendent's successor shall be employed as herein provided.

[fol. 131] (d) Each county board of education shall make or cause to be made a map of the county, showing by distinct lines thereon the boundaries of each school district and parts of school districts therein, if such school districts exist, and shall number the same thereon as established by proper authority. One copy of such map shall be filed in the office of the county superintendent of schools, 1 copy shall be filed with the supervisors of the respective townships, and 1 copy shall be filed in the office of the superintendent of public instruction. If any division or alteration is at any time made in the boundary lines of any district the county board of education shall within 1 month thereafter, file a new map and copies thereof as aforesaid showing such changes.

(e) The county board of education shall cause to be taken an annual school census by the agency and in the manner provided in chapter 30, part 2 of this act, in each and every school district within the provisions of this act.

(f) The county board of education shall make out an annual budget showing the total amount required to carry on the lawful activities of the county board of education, which amount shall be assessed and collected at the same time and in the same manner as other county taxes are assessed and collected and paid out by the proper authorities of said county upon the direction of the county board of education.

(g) The county board of education shall be empowered to furnish services on a consultant or supervisory basis to any school district employing a superintendent of schools upon request of the board of education of that district.

(h) The county board of education shall be empowered to employ teachers meeting the qualifications as set up by the state board of education and the superintendent of public instruction for serving speech defective children, hard of hearing children who need lip reading training, and home-bound children of normal mentality: Provided, That no school district other than the county district is able or is willing to provide such services; And provided further, That such programs are previously approved by the superintendent of public instruction. Such programs when approved may be reimbursed in accordance with the provisions of chapter 17 of part 2 of this act.

(i) The county board of education shall be empowered to direct, supervise and conduct cooperative educational programs within the county in behalf of school districts which request such services from the county board of education. The county board of education is empowered to utilize any available funds, appropriated by the county board of supervisors for that purpose or allocated by boards of education of the cooperating school districts, and to accept contributions from other sources, for the purpose of financing the programs. Such funds shall be deposited with the county treasurer through the county superintendent of schools in a special fund and shall be disbursed

as the county board of education shall direct. Notwithstanding any other provision of law, the county board of supervisors is hereby authorized to appropriate, and the boards of education of the various school districts are hereby authorized to allocate, available funds not otherwise obligated by law, for such educational programs. The county board of education shall have power to employ teachers and take any other action necessary to direct, supervise and conduct such educational programs.

[fol. 132]

EXHIBIT No. 2

The *ad valorem* tax levy by the County School Board (now The Kent Intermediate School district) for special education purposes for the years 1957 to 1964 inclusive was as follows:

1957	½ mill	466,885.00	when fully collected
1958	"	480,844.00	" " "
1959	"	499,301.00	" " "
1960	"	549,822.00	" " "
1961	"	565,950.00	" " "
1962	"	570,892.00	" " "
1963	"	584,624.00	" " "
1964	"	598,653.00	" " "

[fol. 133]

EXHIBIT 3

Powers and duties of the board of education of the intermediate school district under the provisions of § 298a of the school code of 1955, as added by Act No. 190 PA 1962, effective March 28, 1963 (CL 1948, § 340.298a; MSA 15.3298 (1)).

SEC. 298a. (1) The board shall:

(a) Perform such duties as required by law and by the superintendent of public instruction, but shall not super-

sede nor replace the board of education of any constituent school district, nor shall it control or otherwise interfere with the rights of constituent districts except as provided in this chapter.

(b) Employ a superintendent and such assistants, including, in its discretion, a deputy, as it deems necessary for the best interest of the district and fix the compensation for the same. The compensation of the superintendent and his deputy and assistants, which shall include salaries and travel expenses incurred in the discharge of their official duties and the necessary contingent expenses of the office of the board and the superintendent for printing, postage, stationery, record books, equipment, office and telephone rental, rental of rooms for teachers' or school officers' meetings, pupils' mental and achievement tests, expenses incurred in the health and social service program of the office, elections conducted by the board, expenses incurred by the board in the legal performance of its duties, expenses incurred for heat, light, electricity, insurance, buildings and grounds maintenance, per diem of board members, and their expenses incurred in traveling in the discharge of their official duties, reference books, professional journals, instructional supplies and equipment, legal fees, janitorial supplies and equipment, shall be paid by the treasurer, after the same have been authorized by the board, from such amounts as have been levied and collected therefor by the county board of supervisors and from any other available funds. The board shall employ and contract for a term of not to exceed 4 years, a superintendent who shall have the qualifications and perform the duties as provided in this chapter. On or before the close of each term, or sooner if there is a vacancy, the superintendent's successor shall be employed as herein provided.

(c) Prepare an annual general budget which shall be in the same form as that provided for other school districts. On or before March 1 of each year the board shall submit such budget to a meeting of 1 school board member named

from each constituent school district to represent such a district. At such meeting the president of the intermediate district board shall preside, the secretary shall keep the minutes and the representatives of constituent district boards shall by majority vote determine the maximum amount of the intermediate district general budget but shall not make final determinations as to line items in such a budget. Following such meeting the intermediate district board shall file its budget, the maximum amount of which shall not exceed that approved by the school board representative of constituent districts, with the county clerks of the counties in which it has territory. Each county clerk receiving the budget shall deliver it to the tax allocation board in the same manner as other school district budgets are handled.

[fol. 134] The tax allocation board shall receive the budgets from its county clerk, shall treat them as other school district budgets are treated and shall allocate tax rates to intermediate school districts for the purposes set forth in this act. When the intermediate district board has received an allocation on the basis of its budget, it shall certify for collection to the city and township officials concerned a statement of the amount of taxes to be levied, which certification shall be made at the same time and in the same manner as that of other school districts. The rate certified for levy shall not exceed the amount allocated.

On receipt of the statement from such board, the city and township officials responsible for the levying and collection of taxes shall spread on the tax roll an intermediate school district tax equal to the amount ordered spread, and shall collect such taxes in the same manner as other taxes are collected.

Taxes collected under the provisions of this chapter shall be paid over to the county treasurer in the same manner as other county taxes are paid over, and similar accounts and records shall be kept. The county treasurer shall pay over all funds received under this act to the treasurer

of the board. County treasurers of counties in which fractions of the intermediate school districts operating under this act are situated shall pay over those funds collected under the act to the treasurer of the board.

Intermediate school district taxes shall be assessed, levied and collected as provided in Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 to 211.157 of the Compiled Laws of 1948. Budgets shall be submitted and intermediate school districts shall be governed by the provisions of Act No. 62 of the Public Acts of 1933, as amended, being sections 211.201 to 211.217 of the Compiled Laws of 1948.

(d) Receive from the county treasurer such reports of delinquent taxes due school districts as he is required by law to file with township and city clerks and compute from such report the amount of delinquent school taxes due each school district in the county. The county treasurer of each county, at the time of making monthly settlements with the several township and city treasurers of the county, shall file with the secretary of the board a statement of all delinquent school taxes which are included in the amounts sent by the county treasurer to the several township and city treasurers of the county, together with the descriptions upon which the delinquent school taxes have been paid. The board, upon receipt of such statements, shall compute the amount of delinquent school taxes and interest thereon included in the statement which are due each school district of the county and, within 30 days from receiving the statement from the county treasurer, shall give notice to the secretary of the board of education of each school district of the amount of delinquent school tax and interest thereon that belongs to his district and which was included in the amount sent by the county treasurer to the treasurer of the township or city in which his district is located.

(e) Prepare a map of the intermediate district annually as of July 1, showing by distinct lines thereon the boundaries of each constituent school district. One copy of such

map shall be filed in the office of the superintendent, 1 copy shall be filed with each of the supervisors of the respective townships, and 1 copy shall be filed in the office of the superintendent of public instruction, and 1 copy shall be filed in the office of the secretary of state.

(f) Cause an annual school census to be taken by the agency and in the manner provided in sections 941 to 948 of this act, in each and every school district within the provision of this chapter.

[fol. 135] (g) Furnish services on a consultant or supervisory basis to any constituent school district upon request of that district.

(h) Employ teachers meeting the qualifications as set up by the state board of education and the superintendent of public instruction for serving speech defective children, hard of hearing children who need lip reading training, mentally retarded, physically handicapped, emotionally distressed, homebound children of normal mentality and any other atypical children if the programs are previously approved by the superintendent of public instruction, and if no school district other than the intermediate district is able and willing to provide such services. The district, when the programs have been approved by the superintendent of public instruction, may be reimbursed in accordance with the provisions of sections 771 to 780 of this act.

(i) Direct, supervise and conduct cooperative educational programs in behalf of the constituent (sic) school districts which request such services. The board may utilize any available funds not otherwise obligated by law, and accept contributions from other sources, for the purpose of financing the programs. The funds shall be deposited with the treasurer in a special fund and shall be disbursed as the board of education shall direct. Notwithstanding any other provision of law, the board of supervisors may appropriate, and the boards of education of the constituent school districts may allocate available funds not otherwise

obligated by law, for such educational programs. The board may employ teachers and take any other action necessary to direct, supervise and conduct such educational programs.

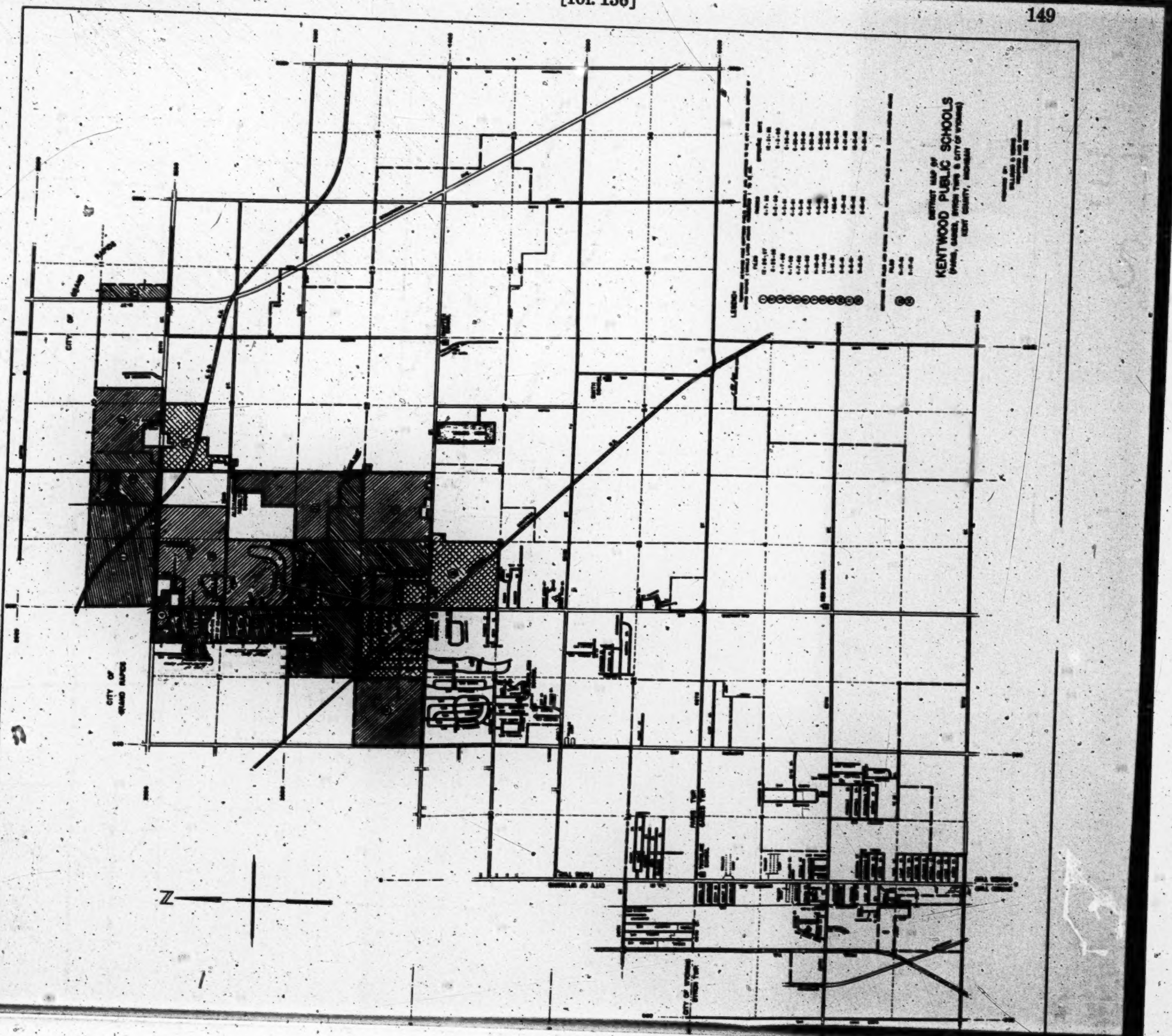
(j) Conduct cooperative programs mutually agreed upon by the boards of not more than 3 intermediate school districts.

(k) When directed by the board of supervisors, establish, if the board deems necessary, a school for those persons of school age who are housed in children's homes operated by the juvenile court or who are living at home but assigned to such school by a juvenile court. The board of education may lease or purchase sites for such schools, build, lease or rent housing facilities for such schools, may employ such teaching and supervisory staff as is necessary to operate such schools, is authorized to make rules and regulations covering the operation of such schools, may exclude students for reason of persistent misbehavior, or bodily conditions and habits disturbing to the orderly conduct of the school, is authorized to classify and promote students for instructional purposes, and otherwise do all those things necessary to the proper conduct of such a school.

(2) Any member of the board may administer oaths for the qualifying of board members and oaths required in any other transaction connected with, or related to, the educational program of the intermediate school district.

EXHIBIT 4

[fol. 136]



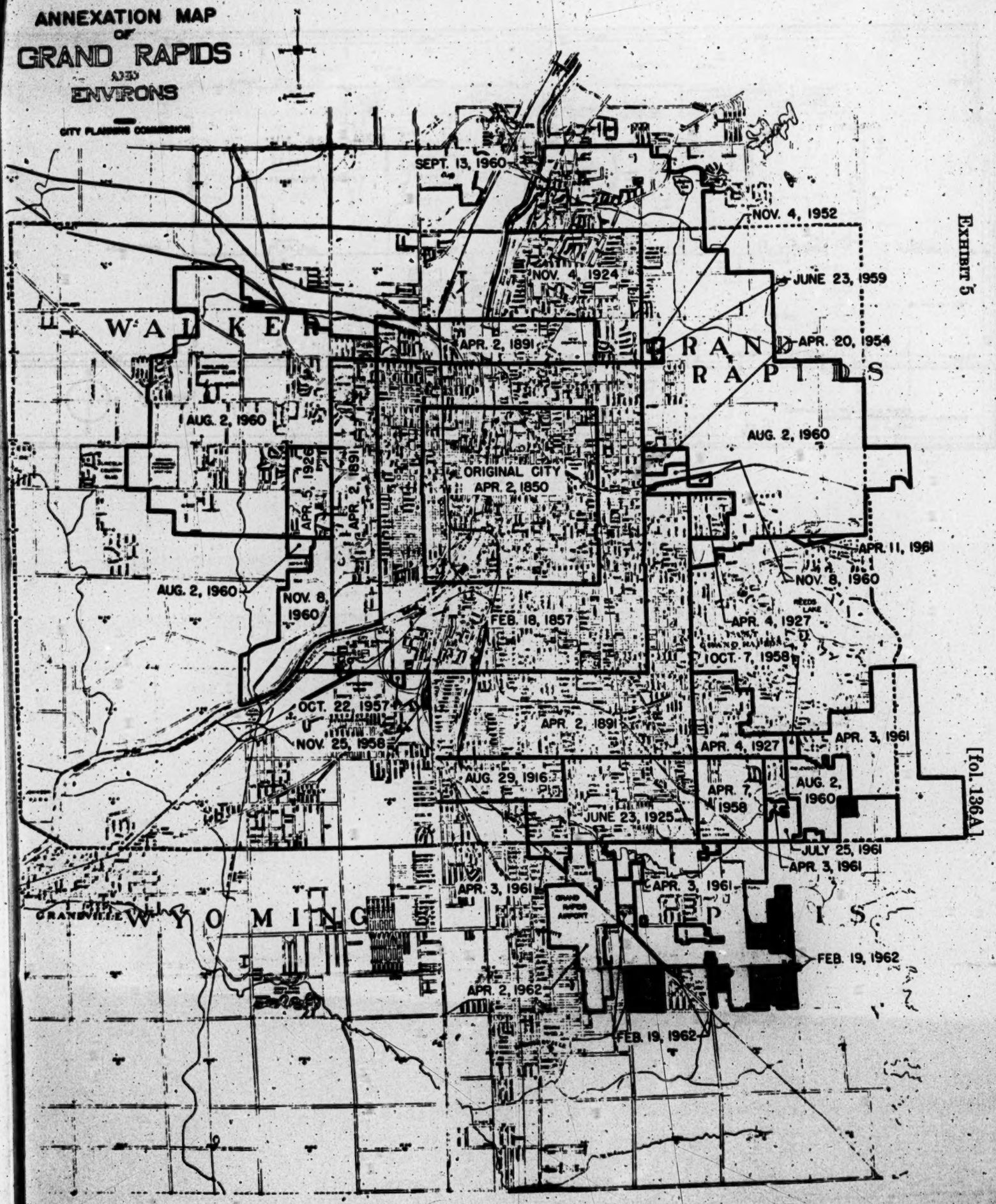


EXHIBIT 5

[fol. 136A]

KENT INTERMEDIATE SCHOOL DISTRICT
BOARD OF EDUCATION

PROPOSAL NO. 2 (TOWNSHIP) Paris - Breton Ave. Area

The following is the result of the votes cast on the matter of annexation of a part of the Township of Paris to the City of Grand Rapids at the Special Election held February 19, 1962 in three areas in Kent County, Michigan.

Proposal No. 1 - Breton Ave. Area

The total number of votes cast for and against annexation of a portion of Paris Township to the City of Grand Rapids was

	Twenty-three thousand and forty-one	23,041
For Annexation	Seventeen thousand seven hundred and forty-two	17,742
Against Annexation	Five thousand two hundred and ninety-nine	5,299
	Total	23,041

and they were given for the following areas:

The City of Grand Rapids received		
	Twenty-two thousand three hundred and thirteen	22,313
For Annexation	Seventeen thousand six hundred and forty-three	17,643
Against Annexation	Four thousand six hundred and seventy	4,670
	Total	22,313
The affected area in the Township of Paris		
received	Seven	7
For Annexation	Seven	7
Against Annexation		0
	Total	7
The Township of Paris outside of the affected area		
received	Seven hundred and twenty-one	721
For Annexation	Ninety-two	92
Against Annexation	Six hundred and Twenty-nine	629
	Total	721

STATE OF MICHIGAN } ss.
COUNTY OF KENT }

WE DO HEREBY CERTIFY, That the foregoing is a correct statement of the votes given in the City of Grand Rapids, Michigan and the Township of Paris in the matter of the proposed annexation of a portion of Paris Township (Breton Ave. Area) to the city of Grand Rapids, Michigan at the Special Election held on February 19, 1962.

IN WITNESS WHEREOF, We have hereunto set our hands and caused to be affixed the seal of the Circuit Court for the County of Kent this 21st. day of February in the year one thousand nine hundred sixty two.

/s/ William Rupp
/s/ Theodore H. Williams
/s/ Mrs. Phyllis de Regnier
Board of Election Canvassers

ATTEST:
/s/ [illegible]

EXHIBIT 7

[Vol. 128]

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EXHIBIT 8

[fol. 139]

PROPOSAL No. 2 TOWNSHIP OF Paris - Kendall Area

The following is the result of the votes cast on the matter of annexation of a portion of the Township of Paris to the City of Grand Rapids at the Special Election held February 19, 1962 in those areas in Kent County, Michigan.

Proposal No. 2 - Kendall Area

The total number of votes cast for and against annexation of a portion of Paris Township to the City of Grand Rapids was

Twenty-two thousand seven hundred and forty-eight	22,748
For Annexation Seventeen thousand four hundred and nineteen	17,419
Against Annexation Five thousand three hundred and twenty-nine	5,329
Total	22,748

and they were given for the following areas:

The City of Grand Rapids received

Twenty-two thousand and twenty-five	22,025
For Annexation Seventeen thousand three hundred and twenty-eight	17,328
Against Annexation Four thousand six hundred and ninety-seven	4,697
Total	22,025

The affected area in the Township of Paris received Twenty-six

For Annexation Sixteen	16
Against Annexation Ten	10
Total	26

The Township of Paris outside of the affected area received Six hundred and ninety-seven

For Annexation Seventy-five	75
Against Annexation Six hundred and twenty-two	622
Total	697

STATE OF MICHIGAN
COUNTY OF KENT } ss.

WE DO HEREBY CERTIFY, That the foregoing is a correct statement of the votes given in the City of Grand Rapids, Michigan and the Township of Paris in the matter of the proposed annexation of a portion of Paris Township - (Kendall Area) to the city of Grand Rapids, Michigan at the Special Election held on February 19, 1962.

IN WITNESS WHEREOF, We have hereunto set our hands and caused to be affixed the seal of the Circuit Court for the County of Kent this 21st. day of February in the year one thousand nine hundred sixty-two.

/S/ William Rupp
/S/ Theodore H. Williams
/S/ Mrs. Phyllis J. Harder
Board of Election Canvassers

ATTEST:
/S/ Jack Bowman

PROPOSAL NO.5 (TOWNSHIP OF Paris - Fuller-Lith. Area)

The following is the result of the vot..st on the matter of annexation of a portion o Township of Paris to the City of Grand Rapids at the Special Election held ~~September 10, 1962~~ February 19, 1962 in these areas in Kent County, Michigan.

Proposal NO. 5 - Fuller-Lith. Area

The total number of votes cast for and against annexation of a portion of Paris Township to the City of Grand Rapids was

Twenty-two thousand seven hundred and twenty-seven	22,727
For Annexation Seventeen Thousand five hundred and thirty-nine	17,539
Against Annexation Five thousand one hundred and eighty-eight	5,188
Total	22,727

and they were given for the following areas:

The City of Grand Rapids received

Twenty-two thousand	22,000
For Annexation Seven[illegible] thousand four hundred and forty-five	17,445
Against Annexation Four thousand five hundred and fifty-five	4,555
Total	22,000

The affected area in the Township of Paris

received Twelve	12
For Annexation Seven	7
Against Annexation Five	5
Total	12

The Township of Paris outside of the affected area

received Seven hundred and fifteen	715
For Annexation Eighty-seven	87
Against Annexation Six hundred and twenty-eight	628
Total	715

STATE OF MICHIGAN
COUNTY OF KENT } ss.

WE DO HEREBY CERTIFY, That the foregoing is a correct statement of the votes given in the City of Grand Rapids, Michigan and the Township of Paris in the matter of the proposed annexation of a portion of Paris Township - (Fuller-Lith. Area) to the city of Grand Rapids, Michigan at the Special Election held on ~~September 10, 1962~~ February 19, 1962.

IN WITNESS WHEREOF, We have hereunto set our hands and caused to be affixed the seal of the Circuit Court for the County of Kent this 21st. day of ~~September~~ February in the year one thousand nine hundred sixty ~~two~~ two.

/s/ William Rupp
/s/ Theodore H. Williams
/s/ Mrs. Phyllis J. Harder
Board of Election Canvassers

ATTEST:

/s/ Jack Brookens
Clerk and Board of Election Canvassers

Exhibit 9

[fol. 140]

154

EXHIBIT "A"

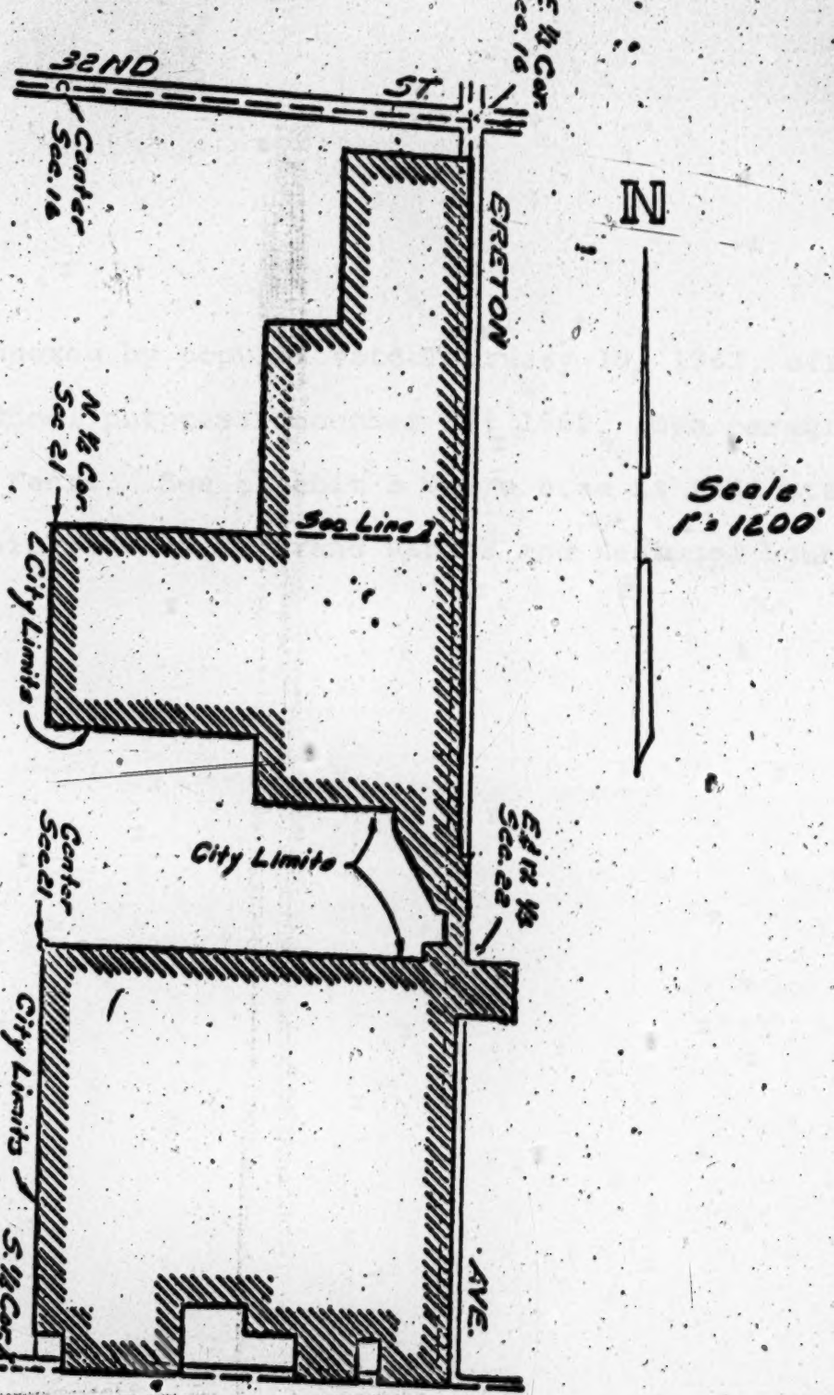
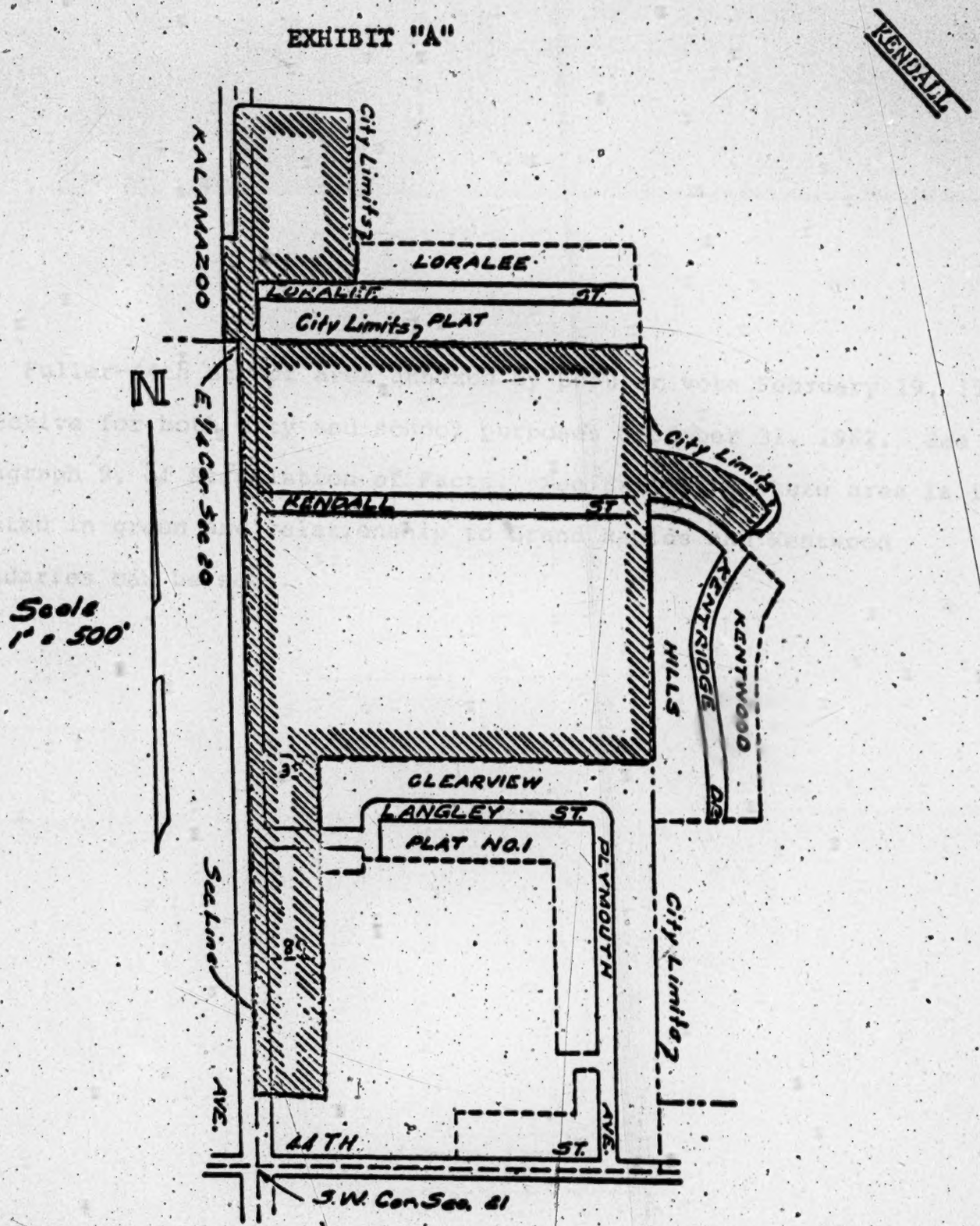


Exhibit 10

[fol. 141]

Breton Avenue area annexed by popular vote February 19, 1962, effective for both city and school purposes December 31, 1962. See paragraph 9 of Stipulation of Facts. See Exhibit 5, where area is indicated in red and relationship of area to Grand Rapids and Kentwood boundaries can be seen.

EXHIBIT "A"



Kendall area annexed by popular vote February 19, 1962, effective for both city and school purposes December 31, 1962. See paragraph 9 of Stipulation of Facts. See Exhibit 5 where area is indicated in blue, and relationship of area to Grand Rapids and Kentwood boundaries can be seen.

Exhibit 11

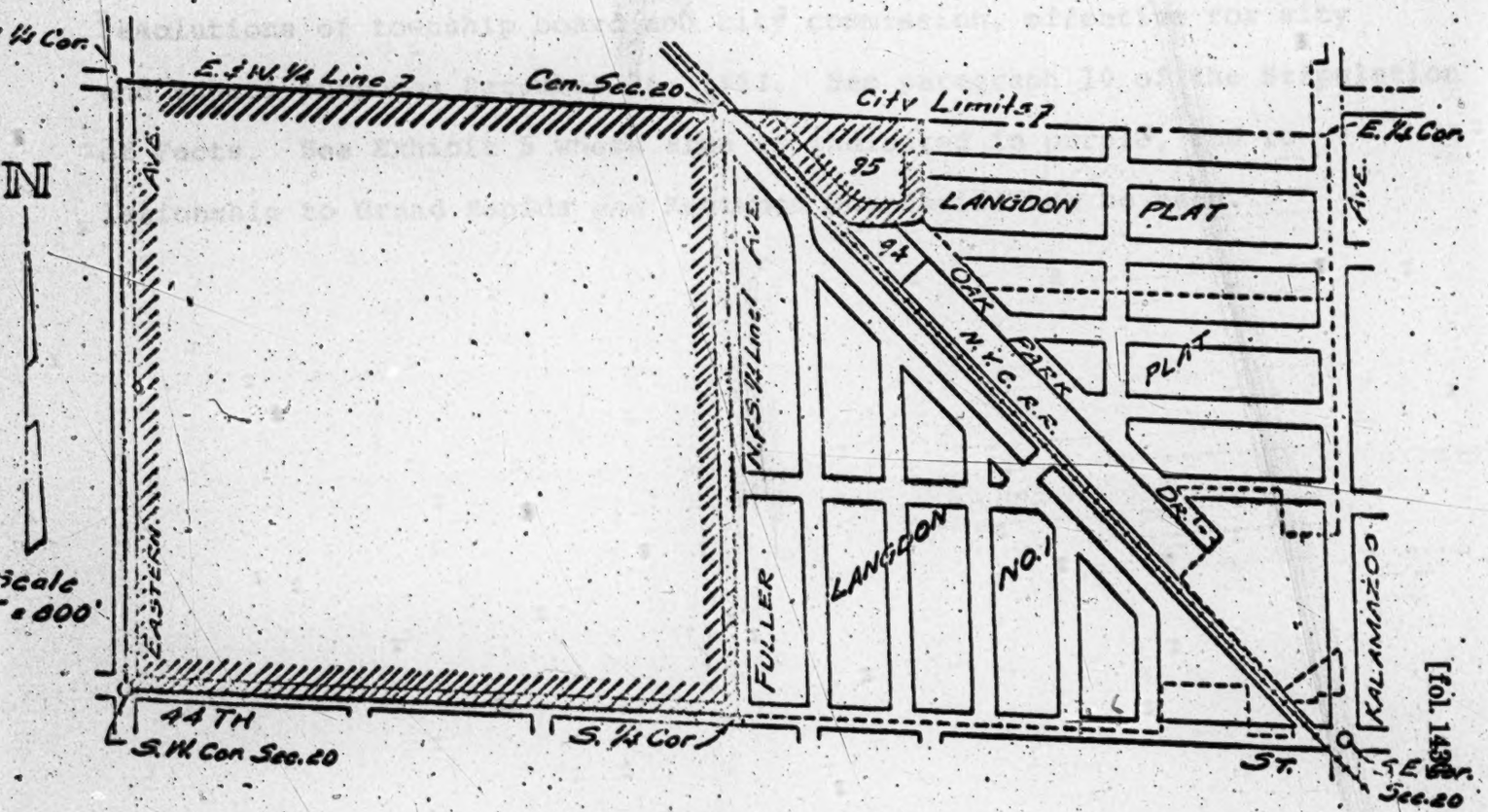
[fol. 142]

EXHIBIT 12

FULLER-44TH

EXHIBIT "A"

MAP SHOWING AREA TO BE ANNEXED



Indicates area to be annexed.

Fuller-44th Street area annexed by popular vote February 19, 1962, effective for both city and school purposes December 31, 1962. See paragraph 9, of Stipulation of Facts. See Exhibit 5 where area is indicated in green and relationship to Grand Rapids and Kentwood boundaries can be seen.

ANNEXATION

PETITION TO ANNEX TO THE CITY OF GRAND RAPIDS
CERTAIN TERRITORY DESCRIBED HEREIN

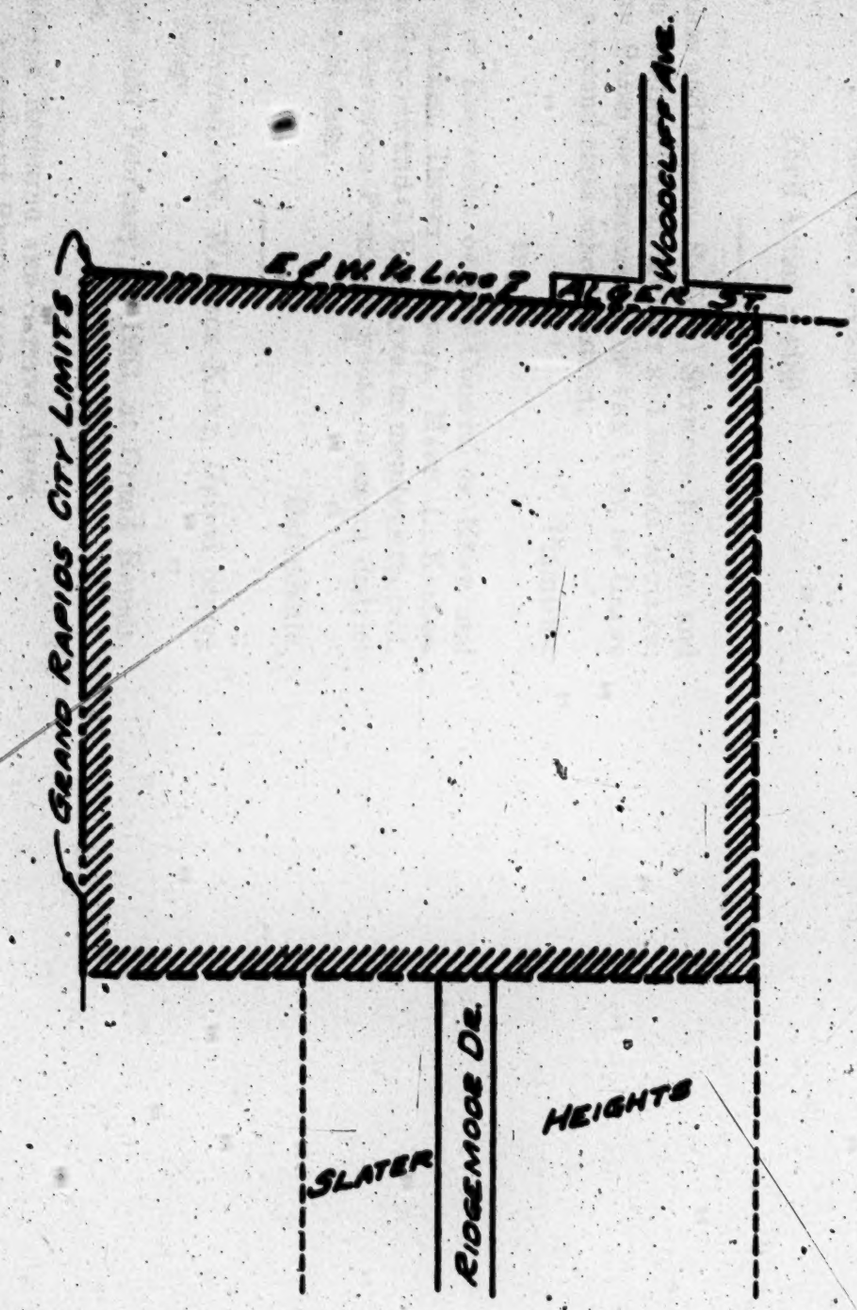


Exhibit 13

[fol 141]

Alger Street area, uninhabited, and therefore annexed by joint resolutions of township board and city commission, effective for city and school purposes December 26, 1962. See paragraph 10 of the Stipulation of Facts. See Exhibit 5 where area is indicated in purple, and relationship to Grand Rapids and Kentwood boundaries can be seen.

[fol. 145]

EXHIBIT 14

UNITED STATES OF AMERICA

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Civil Action #4480

JAMES SAILORS and LORETTA SAILORS; SEYMOUR KONING and MILDRED KONING; GRAZZI MULLAY and ROSALIE MULLAY; and THE BOARD OF EDUCATION OF THE CITY OF GRAND RAPIDS, a second class school district,

Plaintiffs,

vs.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT and VICTOR WELLER, DEWEY JAARSMA, MARY I. KEELER, RUSSELL EMMONS and C. B. LEAVER, as members thereof, and THE KENTWOOD PUBLIC SCHOOLS, a school district of the fourth class,

Defendants.

Before the Honorable W. WALLACE KENT, United States District Judge

At a Session held February 25, 1963, at Grand Rapids, Michigan

ORDER REVOKING AND SETTING ASIDE TEMPORARY RESTRAINING ORDER

This matter is before the Court on motion of defendants to revoke and set aside the temporary restraining order which was issued by order of this court on February 15,

1963, and the Court, after hearing counsel for respective parties thereon and being fully advised in the premises, determined in its findings that the motion should be granted,

Therefore, It Is Ordered that the temporary restraining order heretofore entered be and is hereby revoked and set aside, without prejudice to the right to renew.

Entered at 3:45 PM

Certified as a True Copy:

Howard T. Ziel, Clerk,

By /s/ Howard T. Ziel
Clerk

Feb 26 1963

[fol. 146]

Exhibit 15

RESOLUTION ADOPTED BY THE KENT COUNTY BOARD OF EDUCATION AT A MEETING HELD ON FEBRUARY 25, 1963

Whereas: The Board of Education of Kentwood Public Schools has petitioned the Kent County Board of Education for transfer of four areas known as the Breton Avenue Area, Kendall, Fuller-44th St., and Alger Street Area, and described in said petition, from Grand Rapids Public Schools District to Kentwood Public Schools District, and

Whereas: The Kent County Board of Education held hearings on said petition on five evenings, namely, January 29, 30, and 31, and February 5 and 6, 1963, and

Whereas: The Kent County Board of Education has received and considered the testimony given at said hearings,

NOW THEREFORE BE IT RESOLVED:

That the Kent County Board of Education grant said petition, and

BE IT FURTHER RESOLVED AND ORDERED:

That the four areas known as the Breton Avenue Area, Kendall, Fuller-44th St., and Alger Street Area, described in said petition be detached from Grand Rapids Public Schools District and that said areas be attached to Kentwood Public Schools District, and

BE IT FURTHER RESOLVED AND ORDERED:

That said transfer shall be effective as of March 8, 1963, at 12:01 A.M., Eastern Standard Time.

The above resolution was moved by Member Dewey Jaarsma and seconded by Member Russell Emmons.

Ayes—Russell Emmons, Dewey Jaarsma, C. B. Leaver, Victor Weller
Nays—Mary Keeler

I certify that this is a true copy of said resolution.

/s/ E. J. KLEINERT
E. J. Kleinert, Secretary
Kent County Board of Education

Subscribed and sworn to
before me a notary public
this 26th day of February, 1963.

/s/ GRACE L. KNOL
Grace L. Knol

My commission expires September 15, 1963.

[fol. 147]

EXHIBIT 16

(See opposite) ☞

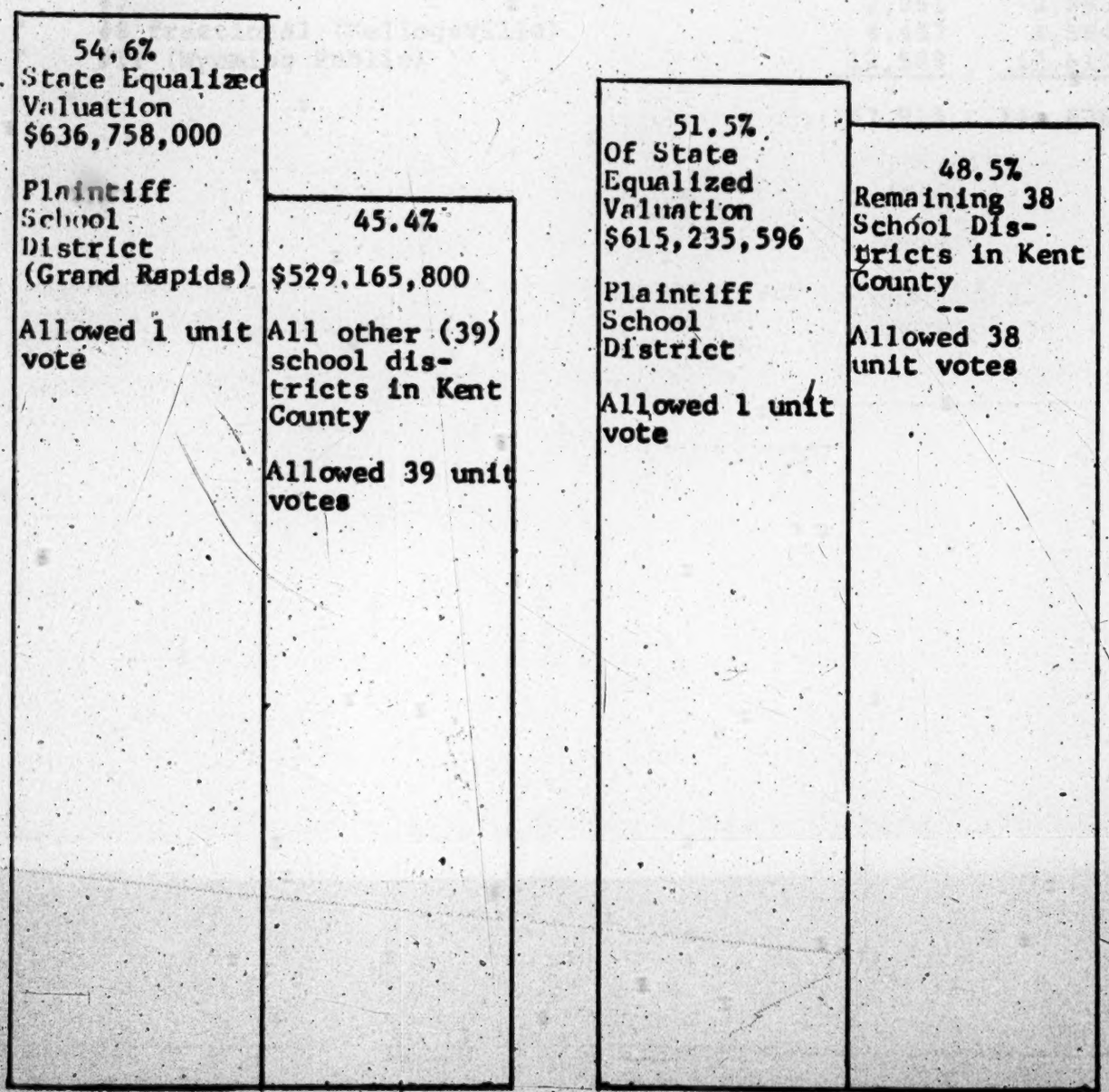
Tabulation of population and voting power for county board members of four of the smaller school districts contrasted with plaintiff school district is as follows:

	population	unit vote	population-variance ratio
Ashley (Gratton #6 fractional)	145	1	1391 to 1
Boyd (Alpine #10)	191	1	1056 to 1
Hoag (Solon #8)	111	1	1818 to 1
Nelson Center (Nelson #6)	99	1	2038 to 1
Grand Rapids (Grand Rapids #1)	201,777	1	--

Exhibit 17

[fol. 148]

Scale: 1" equals $100,000 in valuation.



Total state equalized valuation of Kent County in 1963, $1,165,923,800.

Total state equalized valuation for Kent County in 1964, $1,193,579,600.

See paragraph 21b of Statement of Facts.

0-19 School Census -- KENT COUNTY

	1963	1964
Algoma #1 fractional (Rockford)	4,625	4,637
Alpine #10	98	98
Byron #1 fractional	2,830	2,842
Caladonia	2,614	2,683
Courtland #1	158	163
" #3	86	113
" #5	105	115
" #6 fractional	61	66
East Grand Rapids	5,300	5,439
Grand Rapids #1	75,863	76,395
Grand Rapids #15 fractional (Forest Hills)	4,514	4,759
Gratton #1 fractional	370	377
" #5 fractional	178	194
" #6 fractional	82	82
Lowell #1 fractional	3,049	3,216
" #6	49	49
Nelson #3 fractional	106	93
" #5 fractional	2,156	2,169
" #6	55	58
" #7 fractional	49	52
Paris #6 fractional (Godwin)	5,652	5,668
" #8	181	202
" #12 fractional (Kentwood)	6,760	7,216
Plainfield #9 fractional (Comstock Park)	2,607	2,806
" #16 fractional (Northview)	4,211	4,404
Solon #8	65	57
Sparta	3,685	3,765
Spencer #1 fractional	82	94
" #2	31	32
Tyrone #4 fractional (Kent City)	1,610	1,592
" #8 fractional	258	231
Vergennes #1	35	31
" #4 fractional	92	88
Walker #1	34	35
" #11	1,014	4,643
" #16 fractional	3,468	
Wyoming #1 (Grandville)	5,856	6,080
" #7	2,961	2,890
" #8 fractional (Kellogsville)	4,457	4,584
" #11 (Wyoming Public)	12,508	12,610
	157,915	160,638

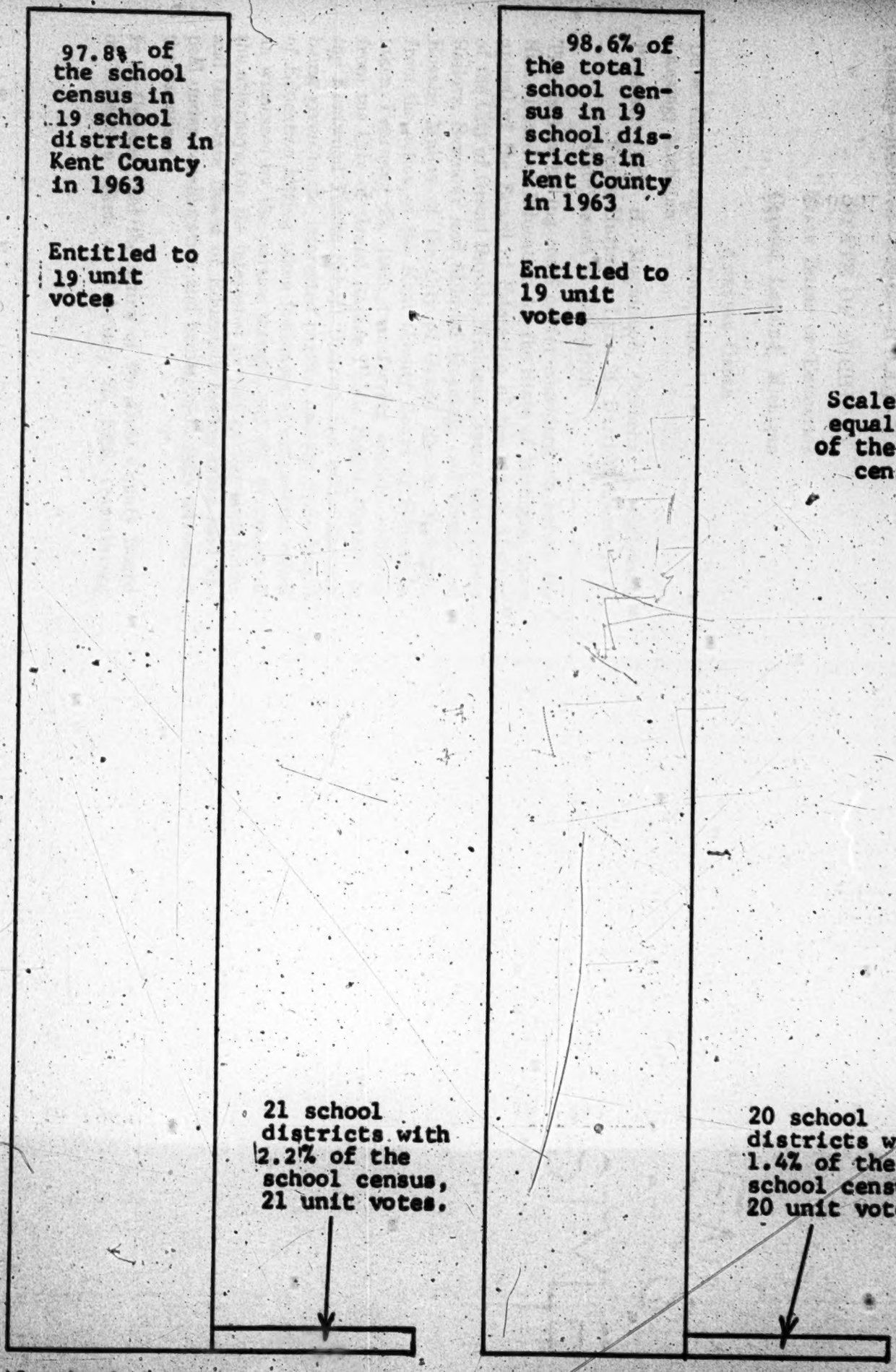
EXHIBIT 18

[fol. 149]

185

EXHIBIT 19

[fol. 150]



See paragraph 21d of the Statement of Facts.

[fol. 151]

EXHIBIT 20

[Stamp—Received—6-20-63—R.D.A.]

STATE OF MICHIGAN

STATE BOARD OF EDUCATION

Capitol, Lansing, Michigan

AMENDED ORDER

Dated this 5th day of June, 1963
Lansing, Michigan

Present: Chris H. Magnusson, Cornelia A. Robinson, Frank Hartman, Lynn M. Bartlett, members of State Board of Education

This matter having come on for consideration before the State Board of Education for the State of Michigan, upon appeal of the Board of Education of the School District of the City of Grand Rapids, Michigan, James and Loretta Sailors, Seymour and Mildred Koening, and Grazzi and Rosalie Mullay of the City of Grand Rapids, Michigan, from the action of the Kent County Board of Education, taken February 25, 1963, transferring certain territory from the City of Grand Rapids Public School District to the Kentwood Public School District, and notice thereon being given to the interested parties, and the State Board of Education having taken testimony of all persons called as witnesses by the parties thereto, and the argument of the attorneys for the interested parties having been made, and the State Board of Education having taken said appeal under consideration and having been fully advised in the premises,

IT IS ORDERED that the action of the Kent County Board of Education taken on February 25, 1963, transferring

certain property from the School District of the City of Grand Rapids to the Kentwood Public School District, be and the same is hereby set aside.

IT IS FURTHER ORDERED that the following property located in the City of Grand Rapids, County of Kent, State of Michigan, more particularly described as:

PARCEL No. 1

Part of Sections 16, 21, and 22 of Paris Township, Kent County, Michigan, described as: Beginning 250 feet south of the east ¼ corner of *Section 16*, thence south on the east line of Section 16 and Section 21, to the North line of Maple Valley Gardens, a recorded Plat, thence east 50 feet to the east line of Breton Avenue, thence south to the east and west ¼ line of *Section 22*, thence east 263 feet, thence south 288.71 feet, thence northwesterly 98.4 feet to a point which is 270 feet south and 217.23 feet east of the west ¼ corner of Section 22, thence west 217.23 feet to the west line of Section 22, thence south to the SE corner of *Section 21*, thence west 426 feet, thence north 264 feet, thence west 165 feet, thence south 264 feet to the south line of Section 21, thence west to a point which is 330 feet east of the SW corner of the east ½ of the SE ¼ of Section 21, thence north 264 feet, thence west 330 feet to the west line of the east ½ of the SE ¼ of Section 21, thence north 171.6 feet, thence west 400 feet, thence south 435.6 feet to the south line of section 21, thence west to a point which is 165 feet east of the south ¼ corner of Section 21, thence north 200 feet, thence west 165 feet to the north and south ¼ line of Section 21, thence north to the center of Section 21, thence east to a point 200 feet west of the east ¼ corner of Section 21, thence north 100 feet, thence east to a point on the east line of the section 100 feet north of the east ¼ corner, thence north to a point 330.29 feet north of the east ¼ corner, thence N 87° 43′ W 165

feet, thence northwesterly 526.9 feet to a point N 87° 43′ W 400 feet from a point on the east section line which is 792.29 feet north of the east ¼ corner, thence north 132 feet, thence west to a point on the east ⅛ line of section 21 which is 132 feet south of the NW [fol. 152] corner of the south 4/5 of the SE ¼ of the NE ¼ of Section 21, thence north on the east ⅛ line to the north line of the south ½ of the NE ¼, thence west to the north and south ¼ line, thence north to the north ¼ corner of Section 21, thence east on the south line of *Section 16* to the SW corner of the SE ¼ of the SE ¼ of Section 16, thence north to the NW corner of the SE ¼ of the SE ¼ of Section 16, thence east to a point which is 825 feet west of the east line of Section 16, thence north parallel with the section line to a point which is 250 feet south of the east and west ¼ line of Section 16, thence east 825 feet to place of beginning.

Except: (James R. Sailors) Part SE¼ of NE¼ Com. 264.06 ft. S along E Sec. Line from N ½ Line Th N. 264.06 ft to N ⅛ line Th W. along N ⅛ line to E ⅛ line. Th. S. along E ⅛ line 264.31 ft. Th E to a pt 700 ft W of E. Sec. Line. Th. S 69 ft Th. E 200 ft. Th N. 69 ft. Th. E 500 ft to Beg. Sec. 21, T6 N, R 11 W, 8.32 A.

(Seymour Koning) Part SE ¼ NE ¼ Com. on E. Sec. Line 264.06 ft. S of N ⅛ Line Th. S. 132 ft. Th. W to a pt 396.31 ft. S. along E ⅛ line from N ⅛ line. Th. N. 132 ft. Th. E to a pt 700 ft W of E. Sec. Line. Th. S. 69 ft. Th. E 200 ft. Th. N. 69 ft. Th. E 500 ft. To Beg. Sec. 21 T 6 N, R 11 W. 3.68 A.

PARCEL No. 2

Part of Sections 20 and 21 of Paris Township, Kent County, Michigan, described as: Beginning at the east ¼ corner of *Section 20*, thence west 50 feet to the west

line of Kalamazoo Avenue, thence north 330 feet, thence east 50 feet to the east line of Section 20 (west line of Section 21), thence north to a point which is 754 feet north of the west ¼ corner of *Section 21*, thence east 375 feet, thence south parallel with the section line 424 feet to the north line of the south ⅛ of the NW ¼ of Section 21, thence east 5 feet, thence south 135 feet, thence west 330 feet along the north line of Loralee Street to the east line of Kalamazoo Avenue, thence south 194.92 feet to the SW corner of Lot 12 of Loralee Plat, thence east on the east and west ¼ line of Section 21 to the NW corner of the east ½ of the SW ¼ of the section, thence south to the NW corner of Lot 1 of Kentwood Hills, a recorded Plat, thence southeasterly along the northerly line of Lots 1, 2, 3, and 4 to the northeasterly corner of Lot 4 of Kentwood Hills, thence southwesterly 113.4 feet to the southeasterly corner of Lot 4, thence northwesterly along the southerly line of Lots 4, 3, 2 and 1 to the SW corner of Lot 1, thence south on the west ⅛ line to the NE corner of Clearview Plat No. 1, thence west along the north line of said Plat to the NE corner of Lot 33, thence south to the SE corner of Lot 89, thence continuing south parallel with the west line of the Section to a point 225.7 feet north of the south line of Section 21, thence west 210 feet to the west line of the Section (center line of Kalamazoo Avenue), thence north to beginning.

Except: Lot #16, Munshaw Plot (Grazzi and Rosalie Mullay); Lots #17 and 18, Munshaw Plot No. 1 (Louisa M. Scalice and Dorothy Biermacker).

PARCEL No. 3

Part of Section 20 of Paris Township, Kent County, Michigan Described as: Beginning at the center of Section 20, thence east 830 feet more or less to the NE corner of Lot 95 of Langdon Plat No. 1 (being

also the NW corner of Langdon Plat), thence south 425.2 feet along the west line of Langdon Plat to its intersection with the northeasterly line of Oak Park Drive, thence southwesterly 60 feet more or less to the corner of Lot 94 of Langdon Plat No. 1 which is 212.37 feet east of the NW corner of said lot, thence west 212.37 feet to the NW corner of said Lot 94, thence northwesterly along the northerly line of the NYC RR right of way to a point which is 50 feet south of the east and west ¼ line of Section 20, thence west to the north and south ¼ line of Section 20, thence south to the south ¼ corner of Section 20, thence west to the SW corner of Section 20, thence north to the west ¼ corner of Section 20, thence east to beginning.

[fol. 153] Parcel No. 4.

Part of the SE ¼ of Section 10, T6N, R 11 W, Paris Township, Kent County, Michigan, described as: Beginning at the NW corner of Slater Heights, a recorded Plat, thence west 348.79 feet more or less to the west line of the east 762.8 feet of the west ½ of the SE ¼ of Section 10 (Grand Rapids City Limits), thence north to the east and west ¼ line, thence east 1042.79 feet, thence south to the NE corner of Slater Heights, thence west to beginning,

be and the same is hereby transferred from the School District of the City of Grand Rapids to the Kentwood Public School District.

It Is Further Ordered that the Kentwood Public School District make no equitable payment to the School District of the City of Grand Rapids for the Alexander Hamilton School and the real property connected therewith which is ordered transferred from the School District of the City of Grand Rapids to the Kentwood Public School District,

in that the State Board of Education finds that the aforesaid school building and real property ceased to be the property of Kentwood Public School District and became a part of the School District of the City of Grand Rapids on December 31, 1962, in accordance with the provisions of Sec. 143 of the School Code of 1955, prior to its amendment by Act 177, PA. 1962 and no equitable payment for said school and real property having been made to the Kentwood Public School District by the School District of the City of Grand Rapids, in accordance with Sec. 146 of the School Code of 1955, prior to amendment by Act 177, P.A. 1962.

CHRIS H. MAGNUSSON
CORNELIA A. ROBINSON
FRANK HARTMAN
LYNN M. BARTLETT

June 18, 1963

I hereby certify that I have compared the above Order with the original on file in the office of the State Board of Education and that it is a true copy thereof.

/s/ LYNN M. BARTLETT
Lynn M. Bartlett, Secretary
State Board of Education

EXHIBIT 21

[fol. 154]

Breton Avenue area de-annexed by order of the County Board and affirmed by the State Board of Education except red areas were left in plaintiff school district. See paragraph 24 of Stipulation of Facts. See Exhibit 5 where area is indicated in red and relationship of area to Grand Rapids and Kentwood boundaries can be seen.

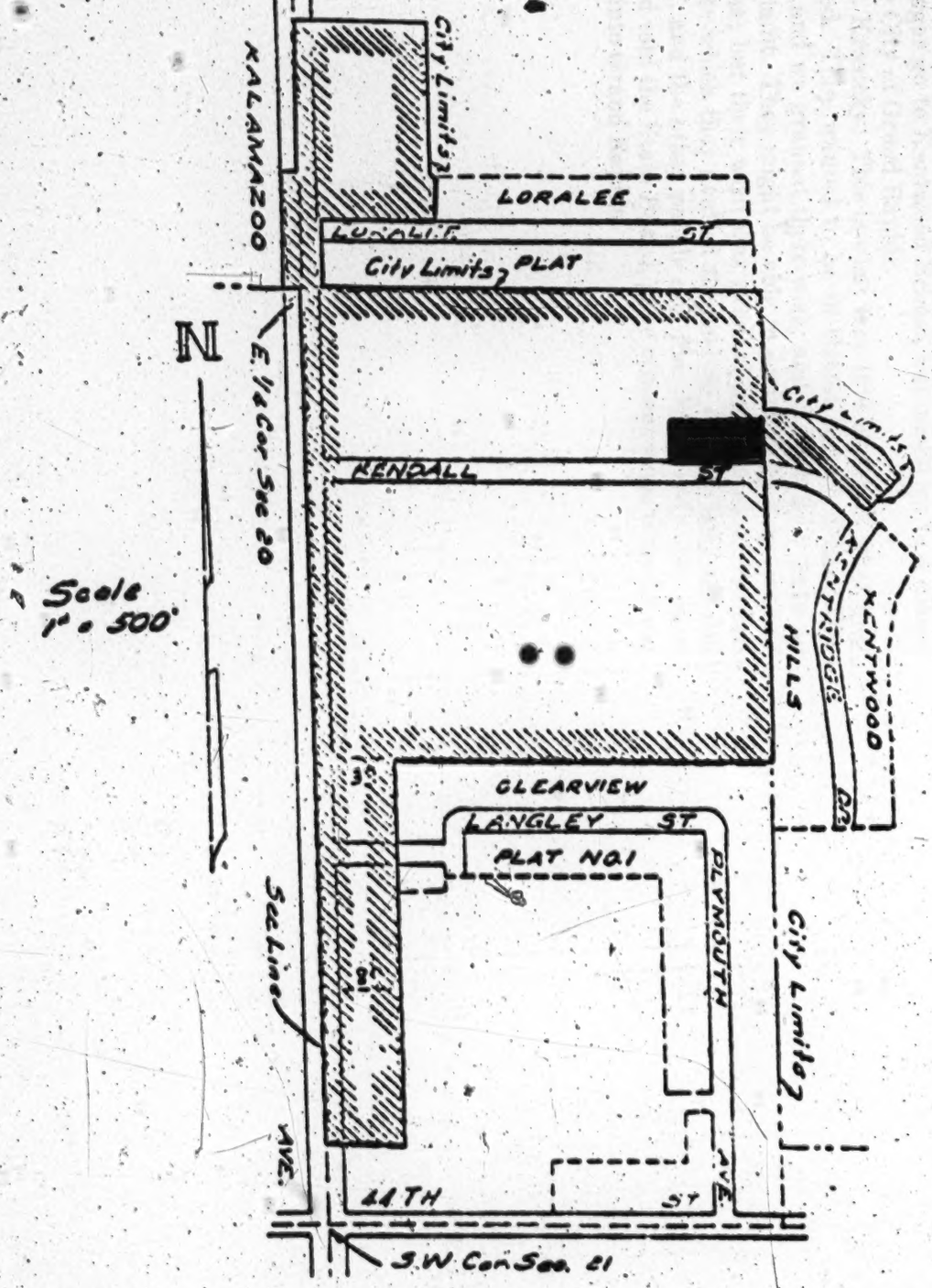


EXHIBIT 22

[fol. 155]

Kendall area de-annexed by order of the County Board, and affirmed by State Board of Education, except red areas were left in plaintiff school district. See paragraph 24 of Stipulation of Facts. See Exhibit 5 where area is indicated in blue and relationship of area to Grand Rapids and Kentwood boundaries can be seen.

[fol. 156]

EXHIBIT 23

• • • • • • •

Judge Fox: Well, Sailors, for example. By reason of cutting their property out of the Kentwood School District and transferring Kentwood School District back to Kentwood, the Sailors' property and the Sailors' children would no longer go to Kentwood School, but would go to a school in the City of Grand Rapids.

Mr. Krasicky: This is what they told us this is what they wanted. They wanted to be in Grand Rapids School District, and we granted their wish, and I think they have no complaint. They might be able to complain as a member of a class; but their wish was granted under a constitutional statute which they availed themselves of, and they got full relief, and the other people did, too. Everybody that came in and told the State Board, gave reasons why, were placed back into Grand Rapids.

Intermediate School District		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964		Budget for 1964
Allegan-	[1]	9	12	11	10	9	8	11	11	2	1	[A]	$22,375.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	0	0	2	4	2	7	3	1	1	1	[C]	3/4 voted
Alpena	[1]	0	0	0	0	0	0	0	0	0	0	[A]	$45,978.76
Annexed Montmorency	[2]	0	0	0	0	0	0	0	0	1	0	[B]	Yes
1-20-64 and Alcona 6-8-64	[3]	0	0	0	0	0	0	0	0	1	0	[C]	0
Alcona	[1]	0	0	0	0	0	0	0	0	0	0	[A]	$ 5,580.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	No.
	[3]	0	0	0	0	0	0	0	1	0	0	[C]	0
Montmorency	[1]	0	0	0	0	0	0	0	0	0	0	[A]	$ 6,906.61 (63)
	[2]	0	0	1	0	0	0	0	0	0	0	[B]	
	[3]	0	0	0	0	0	0	0	0	0	0	[C]	
Antrim	[1]	1	0	2	2	0	0	1	2	1	0	[A]	$ 7,865.88
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	No
	[3]	0	0	0	0	0	0	1	1	1	0	[C]	0
Barry	[1]	3	7	4	2	5	1	3	5	0	0	[A]	$30,900.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	0	1	2	0	2	2	0	2	3	1	[C]	1/2 voted
Bay	[1]	0	3	4	4	3	3	3	3	4	1	[A]	$52,800.00
Bay annexed Arenac 6-10-63	[2]	0	0	0	0	0	2	0	0	0	1	[B]	Yes
	[3]	0	0	0	0	0	0	0	0	0	0	[C]	1/2 voted

[1] Transfers Granted
[2] Emergency Situation
[3] Awaiting Ruling

[A] Intermediate District Budget
[B] Special Education Program
[C] Millage voted Tax for Special Education

[fol. 158]

Intermediate School District		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964		Budget for 1964
Arenac	[1]	0	9	4	7	3	3	2	0			[A]	
	[2]	0	0	0	0	0	0	0	0			[B]	
	[3]	0	0	1	2	0	1	0	0			[C]	
Benzie	[1]	0	8	2	0	0	0	0	0	0	0	[A]	$16,257.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	0	2	1	2	0	0	0	0	1	0	[C]	0
Berrien	[1]	0	2	1	5	3	4	2	0	1	4	[A]	$76,610.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	0	6	10	0	1	2	4	0	1	1	[C]	0
Branch	[1]	1	4	0	0	1	3	0	2	7	0	[A]	$21,580.00
	[2]	0	0	0	0	0	1	0	0	0	0	[B]	Yes
	[3]	2	1	1	0	0	2	0	1	0	2	[C]	1 voted
Calhoun	[1]	1	5	6	6	5	2	4	2	3	0	[A]	$56,750.00
	[2]	0	1	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	1	2	1	2	1	3	2	1	0	0	[C]	1/2 voted
Cass	[1]	1	2	8	7	11	4	3	8	7	3	[A]	$25,265.00
	[2]	0	0	0	0	1	1	1	0	2	1	[B]	Yes
	[3]	0	0	2	10	19	22	29	17	12	0	[C]	1/2 voted
Charlevoix-Emmet Consolidated 7/31/63	[1]										0	[A]	$24,628.92
	[2]										0	[B]	No (X)
	[3]										0	[C]	0

[1] Transfers granted
[2] Transfer modified
[3] Transfers denied

[A] Intermediate District Budget
[B] Special Education Program
[C] Mills Voted Tax For Special Education

(X) Voted special educatio program since d of report

[fol. 159]

Intermediate School District		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964		Budget for 1964
Charlevoix	[1]	1	1	3	5	1	1	2	1	2		[A]	
	[2]	0	0	0	0	0	0	0	0	0		[B]	
	[3]	0	1	0	0	0	0	1	1	0		[C]	
Emmet	[1]	1	0	0	1	0	0	0	0	0		[A]	
	[2]	0	0	0	0	0	0	1	0	0		[B]	
	[3]	0	0	0	0	0	0	0	1	0		[C]	
Cheboygan	[1]	1	1	0	0	0	0	2	1	4	0	[A]	$20,080.73
Cheboygan annexed	[2]	0	0	0	0	0	0	0	0	0	0	[B]	No
Otsego & Presque Isle 6-10-63	[3]	1	0	0	1	0	0	0	0	0	0	[C]	0
Otsego	[1]	2	2	9	5	4	3	2	0	0		[A]	
	[2]	0	0	0	0	0	0	0	0	0		[B]	
	[3]	0	0	0	5	0	0	0	0	0		[C]	
Presque Isle	[1]	0	0	1	0	0	0	1	0	0		[A]	
	[2]	0	0	0	0	0	0	0	0	0		[B]	
	[3]	0	0	1	0	0	0	0	0	1		[C]	
Chippewa	[1]	0	0	0	0	1	0	1	0	0		[A]	$12,975.00
Chippewa annexed Luce 6-8-64	[2]	0	0	0	0	0	0	0	0	0		[B]	No
	[3]	0	0	0	0	0	0	0	0	0		[C]	0
Luce	[1]	0	0	0	0	0	0	0	0	0		[A]	
	[2]	0	0	0	0	0	0	0	0	0		[B]	
	[3]	0	0	0	0	0	0	0	0	0		[C]	

[1] Transfers granted
[2] Transfers modified
[3] Transfers denied

[A] Intermediate District Budget
[B] Special Education Program
[C] Mills voted Tax for Special Education

Intermediate School District		1952	1954	1956	1958	1960	1962	1963	1964		Budget for 1964
	(1)							1	0	(A)	$ 17,345.00
[illegible]	(2)							0	0	(B)	Yes
	(3)							0	0	(C)	1 voted
	(1)	14	14	16	24	18	15	15	10	(A)	$ 21,400.00
Manton	(2)							0	0	(B)	Yes
	(3)	0	0	2	2	0	1	0	0	(C)	3/4 voted
	(1)	0	1	2	0	0	0	1	0	(A)	$ 4,317.00
[illegible]rd	(2)	0	0	0	0	0	0	0	0	(B)	No
	(3)	0	0	0	0	0	0	0	0	(C)	0
Delta	(1)	0	0	0	0	3	0	0	0	(A)	$ 14,050.00
Unified Reorganization	(2)	0	0	0	0	0	0	0	0	(B)	No
5/8/64	(3)	0	0	0	0	2	0	0	0	(C)	0
Schoolcraft	(1)	0	0	0	0	0	0	0		(A)	$ 7,957.32
	(2)	0	0	0	0	1	0	0		(B)	
	(3)	0	0	0	0	0	0	0		(C)	
	(1)	0	0	0	0	0	0	1	0	(A)	$ 15,184.00
Dickinson	(2)	0	0	0	0	0	0	0	0	(B)	No
	(3)	0	0	0	0	0	0	0	0	(C)	0
	(1)	21	22	20	42	58	11	12	17	15	11	(A)	$ 26,550.00
Eaton	(2)	0	0	0	0	0	0	0	0	0	0	(B)	Yes
	(3)		1	1	20	16	2	2	7	12	4	(C)	1 voted

(1) Transfers granted
(2) Transfers modified
(3) Transfers denied

(A) Intermediate District Budget
(B) Special Education Program
(C) Mills Voted Tax for Special Education

[fol. 161]

Intermediate School District		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964		Budget for 1964
Genesee	(1)	10	4	9	5	1	2	0	6	4	0	(A)	$215,192.00
	(2)	0	0	1	0	0	1	0	0	0	0	(B)	Yes
	(3)	0	0	1	4	6	1	0	2	0	0	(C)	1/2 voted
Gladwin	(1)	1	2	1	2	1	0	1	0	0	0	(A)	$ 8,675.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	Yes
	(3)	2	2	4	0	2	1	0	0	0	0	(C)	1 voted
Gogebic	(1)	0	0	0	0	0	0	0	0	0	0	(A)	$ 6,500.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	No
	(3)	0	0	0	0	0	0	0	0	0	0	(C)	0
Grand Traverse-Grand Traverse annexed Kalkaska 8-16-63	(1)	2	5	7	5	3	3	2	1	2	0	(A)	$ 20,903.39
	(2)	0	0	0	0	0	1	1	2	0	0	(B)	Yes
	(3)	0	4	1	5	3	1	0	0	1	0	(C)	0
Kalkaska	(1)	0	1	1	2	1	1	0	1	0		(A)	
	(2)	0	0	0	0	0	0	0	0	0		(B)	
	(3)	0	0	1	0	0	0	0	0	0		(C)	
Gratiot	(1)	1	5	4	5	3	4	10	15	19	3	(A)	$ 18,391.57
	(2)	1	1	0	0	0	0	0	0	3	0	(B)	Yes
	(3)	0	1	4	2	1	0	2	6	9	3	(C)	3/4 vote
Hillsdale	(1)	8	4	5	1	2	4	2	2	1	0	(A)	$ 17,800.00
	(2)	1	0	0	0	0	0	0	0	0	0	(B)	Yes
	(3)	0	2	1	1	0	1	0	0	0	0	(C)	7/10 voted

(1) Transfers granted
(2) Transfers modified
(3) Transfers denied

(A) Intermediate District Budget
(B) Special Education Program
(C) Mills voted Tax for Special Education

Intermediate School District		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964		Budget for 1964
Houghton	(1)	0	0	1	0	0	0	0	1	0	1	(A)	$27,000.00
Houghton annexed Baraga	(2)	0	0	0	0	0	0	1	0	0	0	(B)	Yes
6-8-64	(3)	0	0	0	0	0	0	0	0	0	0	(C)	1 Voted
Baraga	(1)	0	0	0	0	0	0	0	0	0		(A)	
	(2)	0	0	0	0	0	0	0	0	0		(B)	
	(3)	0	0	0	0	0	0	0	0	0		(C)	
Huron	(1)	8	7	6	11	8	8	11	8	7	1	(A)	$100,918.69
	(2)	1	0	1	0	0	1	0	4	0	0	(B)	Yes
	(3)	1	1	0	7	3	4	4	4	4	4	(C)	1/2 Voted
Ingham	(1)	7	4	5	6	2	6	8	12	5	3	(A)	$ 54,000.00
	(2)	1	0	1	3	0	0	0	0	0	0	(B)	Yes
	(3)	1	1	0	3	0	1	0	0	0	0	(C)	3/4 Voted
Ionia	(1)	4	43	25	21	37	6	28	18	6	0	(A)	$ 36,325.00
	(2)	0	1	8	1	1	0	0	1	2	0	(B)	Yes
	(3)	0	11	6	3	8	2	10	8	1	0	(C)	1/2 Voted
Iosco	(1)	0	1	2	0	0	0	1	0	0	0	(A)	$ 18,000.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	No
	(3)	0	0	2	1	3	0	1	0	0	0	(C)	0
Iron	(1)	0	0	0	0	0	0	0	0	0	0	(A)	$ 40,001.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	No
	(3)	0	0	0	0	0	0	0	0	0	0	(C)	0

(1) Transfers granted
(2) Transfers modified
(3) Transfers denied

(A) Intermediate District Budget
(B) Special Education Program
(C) Mills Voted Tax for Special Education

Intermediate School District		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964		Budget for 1964
Isabella	(1)	1	4	5	3	3	3	5	2	1	0	(A)	$ 11,422.16
	(2)	0	0	0	0	0	0	1	1	0	0	(B)	Yes
	(3)	0	0	0	1	2	0	0	0	3	0	(C)	3/4 voted
Jackson	(1)	6	6	6	6	5	6	2	9	3	0	(A)	$ 72,105.72
	(2)	0	0	0	0	0	0	0	1	0	0	(B)	Yes
	(3)	1	0	2	3	2	4	2	7	0	0	(C)	1/2 voted
Kalamazoo Valley	(1)	0	5	1	1	3	0	2	0	4	0	(A)	$109,304.50
	(2)	0	0	1	0	0	0	0	0	0	0	(B)	Yes
	(3)	1	2	3	2	0	1	1	1	1	0	(C)	4/5 voted
Kent	(1)	9	19	25	21	14	18	21	43	23	6	(A)	$116,366.00
	(2)	0	0	0	2	0	0	0	0	0	0	(B)	Yes
	(3)	1	1	3	0	5	16	20	8	1	3	(C)	1/2 voted
Keweenaw	(1)	0	0	0	0	0	0	1	0	0	0	(A)	$ 4,682.39
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	No
	(3)	0	0	0	0	0	0	0	0	0	0	(C)	0
Lake	(1)	1	3	1	1	0	0	1	0	0	0	(A)	$ 9,225.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	Yes
	(3)	1	2	0	0	1	2	0	0	0	1	(C)	3/4 voted
Lapeer	(1)	21	120	77	49	3	16	8	3	0	2	(A)	$ 84,620.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	Yes
	(3)	21	16	46	32	36	11	3	7	7	0	(C)	1/2 voted

(1) Transfers granted
(2) Transfers modified
(3) Transfers denied

(A) Intermediate District Budget
(B) Special Education Program
(C) Mills voted Tax for Special Education

Intermediate School District		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964		Budgets for 1964
Leelanau	[1]	0	0	0	0	0	0	0	0	0	0	[A]	$ 7,036.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	No
	[3]	0	0	0	0	0	0	0	0	0	0	[C]	0
Lenawee	[1]	141	53	2	4	5	7	10	1	24	1	[A]	$ 43,000.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	6	17	0	2	1	4	1	2	30	2	[C]	1/2 Voted
Livingston	[1]	5	3	6	14	3	2	0	3	1	1	[A]	$ 19,570.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	0	3	4	3	2	1	2	1	0	0	[C]	3/4 Voted
Mackinac	[1]	0	0	0	0	0	0	0	0	0	0	[A]	$ 10,200.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	No
	[3]	0	0	0	0	0	0	0	0	0	0	[C]	0
Macomb	[1]	5	2	1	3	2	3	0	2	0	2	[A]	$ 117,300.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	1	0	0	1	6	0	0	0	0	2	[C]	1/2 Voted
Manistee	[1]	1	40	2	13	4	23	0	30	0	0	[A]	$ 34,133.06
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	0	0	0	0	3	5	1	5	1	0	[C]	1/2 Voted
Marquette	[1]	1	0	0	1	1	3	1	0	0	0	[A]	$ 29,575.00
Marquette annexed Alger 6-10-63	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	0	0	0	0	0	0	0	0	0	0	[C]	0

[1] Transfers granted
[2] Transfers modified
[3] Transfers denied

[A] Intermediate District Budget
[B] Special Education Program
[C] Mills Voted Tax for Special Education

[fol. 165]

Intermediate School District		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964		Budgets for 1964
Alger	[1]	0	0	0	0	0	0	0	0	0		[A]	$
	[2]	0	0	0	0	0	0	0	0	0		[B]	
	[3]	0	0	0	0	0	0	0	0	0		[C]	
Mason	[1]	4	19	44	8	5	1	11	8	1	2	[A]	$ 17,350.00
	[2]	0	0	0	0	0	0	1	0	0	0	[B]	Yes
	[3]	0	0	0	0	0	1	0	5	0	1	[C]	3/4 Voted
Mecosta	[1]	1	2	5	2	1	0	5	4	1	3	[A]	$ 8,128.00
Mecosta annexed	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
Osceola 6-8-64	[3]	0	0	2	2	4	1	0	0	1	0	[C]	1/2 Voted
Osceola	[1]	0	5	14	11	6	6	2	3	3		[A]	$ 13,225.00
	[2]	1	0	2	3	0	1	0	0	0		[B]	Yes
	[3]	2	2	2	3	0	1	0	1	0		[C]	0
Menominee	[1]	0	0	0	0	1	1	0	0	0	0	[A]	$ 1[illegible],342.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	No
	[3]	0	0	0	0	0	2	0	0	0	0	[C]	0
Midland	[1]	0	3	3	1	1	0	4	4	1	4	[A]	$ 45,320.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	No
	[3]	2	3	5	2	0	2	5	1	3	1	[C]	0
Monroe	[1]	5	6	1	7	0	0	2	5	2	0	[A]	$ 56,950.00
	[2]	0	0	1	0	0	0	0	0	0	0	[B]	Yes
	[3]	2	2	4	7	1	0	1	2	1	1	[C]	1/2 Voted

[1] Transfers granted
[2] Transfers modified
[3] Transfers denied

[A] Intermediate District Budget
[B] Special Education Program
[C] Mills Voted Tax for Special Education.

[fol. 166]

Intermediate School District		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964		Budgets for 1964
Montcalm	[1]	7	15	16	8	6	3	0	16	13	2	[A]	$ 33,402.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	3	0	6	0	6	3	1	2	2	0	[C]	1/2 Voted
Muskegon	[1]	1	0	3	1	4	6	6	0	3	2	[A]	$ 87,649.00
	[2]	0	0	0	0	0	1	1	0	0	0	[B]	Yes
	[3]	1	1	1	0	4	2	2	0	1	0	[C]	1/2 Voted
Newaygo	[1]	1	4	11	7	10	5	3	1	2	1	[A]	$ 89,985.00
	[2]	0	0	0	0	0	0	1	0	0	0	[B]	Yes
	[3]	0	1	3	2	1	0	0	1	4	0	[C]	1/2 Voted
Oakland	[1]	1	10	10	4	4	2	2	3	0	2	[A]	$357,029.22
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	0	1	3	1	0	1	2	1	1	1	[C]	1/2 Voted
Oceana	[1]	4	4	1	8	3	10	5	10	9	1	[A]	$ 15,500.00
	[2]	0	0	0	0	0	0	1	1	0	0	[B]	Yes
	[3]	0	0	0	0	0	1	0	0	0	0	[C]	1 Voted
Ogemaw	[1]	1	10	4	1	0	1	0	0	0	0	[A]	$ 5,715.00 (1963)
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	No
	[3]	0	4	1	1	1	1	0	1	1	0	[C]	0
Ontonagon	[1]	0	0	0	0	0	0	0	1	0	0	[A]	$ 11,940.00
	[2]	0	0	0	0	0	0	0	0	0	0	[B]	Yes
	[3]	0	0	0	0	0	0	0	0	0	0	[C]	1 Voted

[1] Transfers granted
[2] Transfers modified
[3] Transfers denied

[A] Intermediate District Budget
[B] Special Education Program
[C] Mills Voted Tax for Special Education.

[fol. 167]

Intermediate School District		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964		Budget for 1964
Oscoda	(1)	0	0	0	0	0	0	0	2	1	0	(A)	$ 1,600.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	No
	(3)	0	0	0	0	0	0	0	0	0	0	(C)	0
Ottawa	(1)	3	3	5	0	2	2	0	3	1	0	(A)	$ 62,118.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	Yes
	(3)	3	4	4	2	1	2	0	1	0	0	(C)	1/2 Voted
Roscommon	(1)	0	0	0	0	1	1	1	0	1	0	(A)	$ 4,500.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	Yes
	(3)	0	0	0	0	0	0	0	0	0	0	(C)	0
Saginaw	(1)	4	12	15	9	2	4	5	5	4	0	(A)	$ 63,850.00
	(2)	1	0	0	0	0	0	2	1	1	0	(B)	No
	(3)	3	2	2	1	1	2	1	2	1	0	(C)	0
St. Clair	(1)	65	31	10	14	8	13	4	10	9	1	(A)	$ 95,345.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	Yes
	(3)	0	0	2	3	1	3	4	4	0	0	(C)	1/2 Voted
St. Joseph	(1)	14	15	7	5	11	5	3	12	8	3	(A)	$ 25,841.00
	(2)	0	3	0	0	1	0	0	0	0	0	(B)	Yes
	(3)	2	9	1	0	2	0	3	7	4	3	(C)	1 Voted
Sanilac	(1)	4	8	4	5	2	5	4	3	16	4	(A)	$ 18,824.16
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	No
	(3)	2	3	4	6	3	1	6	9	13	3	(C)	0

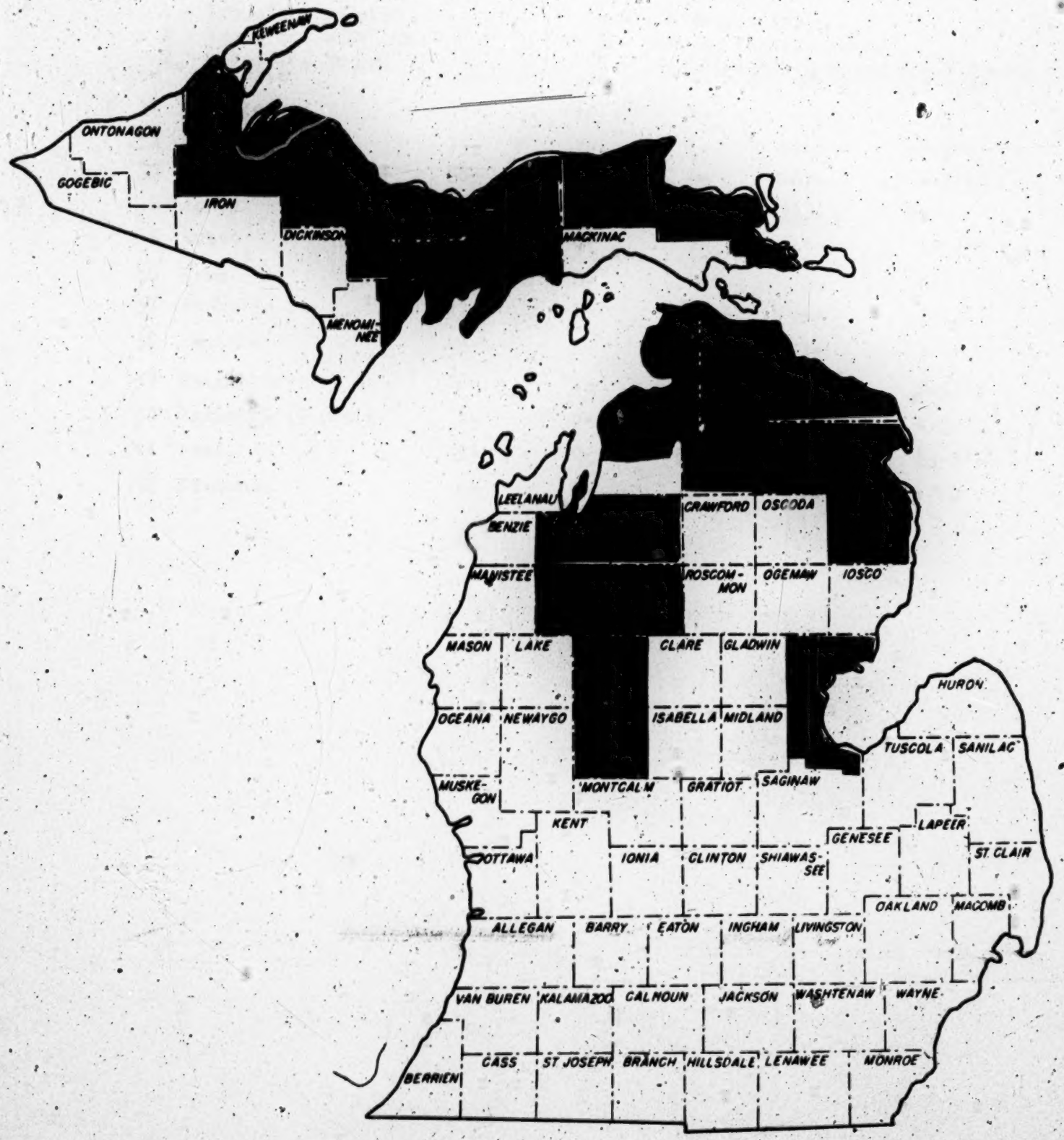
(1) Transfers granted
(2) Transfers modified
(3) Transfers denied

(A) Intermediate District Budget
(B) Special Education Program
(C) Mills Voted Tax for Special Education

Intermediate School District		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964		Budget for 1964
Shiawassee	(1)	4	7	12	9	4	7	21	19	10	3	(A)	$ 31,942.09
	(2)	1	0	3	1	0	1	1	4	1	0	(B)	Yes
	(3)	1	5	2	5	1	6	2	3	5	3	(C)	3/4 voted
Tuscola	(1)	2	6	25	16	16	24	15	25	17	7	(A)	$ 21,400.00
	(2)	0	0	0	0	1	2	1	1	4	0	(B)	Yes
	(3)	0	5	4	2	2	3	6	8	5	4	(C)	3/4 voted
Van Buren	(1)	1	3	15	7	6	15	28	4	2	1	(A)	$ 25,600.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	Yes
	(3)	2	6	5	1	3	4	3	1	3	1	(C)	1 voted
Washtenaw	(1)	9	7	11	4	4	4	7	4	1	1	(A)	$ 53,341.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	Yes
	(3)	0	0	0	0	0	2	0	1	0	1	(C)	1/2 voted
Wayne	(1)	6	5	3	6	5	1	2	0	2	0	(A)	$395,170.00
	(2)	0	0	0	0	0	0	0	0	0	0	(B)	No
	(3)	0	2	1	7	4	3	1	2	1	0	(C)	0
Wexford	(1)	2	2	1	1	2	2	3	3	3	2	(A)	$ 18,531.78
Wexford annexed	(2)	0	0	0	0	0	0	0	0	0	2	(B)	No
Missaukee 6-8-64	(3)	1	1	0	2	0	4	4	2	2	4	(C)	0
Missaukee	(1)	0	0	4	0	1	0	1	0	1		(A)	
	(2)	0	0	0	0	0	0	0	0	0		(B)	
	(3)	0	1	2	0	1	0	0	1	0		(C)	

(1) Transfers granted
(2) Transfers unaffected
(3) Transfers denied

(A) Intermediate District Budget
(B) Special Education Program
(C) Mills voted Tax for Special Education


KEWEENAW
ONTONAGON
GOGEBIC
IRON
DICKINSON
MACKINAC
MENOMI-
NEE
LEELANAU
BENZIE
CRAWFORD
OSCODA
MANISTEE
ROSCOM-
MON
OGEMAW
IOSCO
MASON
LAKE
CLARE
GLADWIN
HURON
OCEANA
NEWAYGO
ISABELLA
MIDLAND
TUSCOLA
SANILAC
MUSKE-
GON
MONTCALM
GRATIOT
SAGINAW
KENT
LAPEER
GENESEE
OTTAWA
IONIA
CLINTON
SHIAWAS-
SEE
ST. CLAIR
OAKLAND
MACOMB
ALLEGAN
BARRY
EATON
INGHAM
LIVINGSTON
VAN BUREN
KALAMAZOO
CALHOUN
JACKSON
WASHTENAW
WAYNE
CASS
ST JOSEPH
BRANCH
HILLSDALE
LENAWEE
MONROE
BERRIEN

INTERMEDIATE SCHOOL DISTRICT TEN YEAR TRANSFER REPORT

Key:
1 - Transfers granted
2 - Transfers modified
3 - Transfers denied
4 - Ten year total
5 - Average for ten years
X - Indicates reorganization of Intermediate School Districts since 6-1-63

			1	2	3	4	5
X	01	Alcona	0-	0-	1=	1=	1/10
X	02	Alger	0-	0-	0=	0=	0
	03	Allegan	0-	1-	1=	2=	1/5
X	04	Alpena	0-	1-	1=	2=	1/5
	05	Antrim	9-	0-	3=	12=	1-1/5
X	06	Arenac (7 yrs.)	28-	0-	4=	32=	3-1/5
X	07	Baraga	0-	0-	0=	0=	0
	08	Barry	30-	0-	13=	43=	4-3/10
X	09	Bay	28-	3-	12=	43=	4-3/10
	10	Benzie	10-	0-	6=	16=	1-3/5
	11	Berrien	22-	0-	25=	47=	4-7/10
	12	Branch	18-	1-	9=	28=	2-4/5
	13	Calhoun	34-	1-	13=	48=	4-4/5
	14	Cass	54-	6-	111=	171=	17-1/10
X	15	Charlevoix (9 yrs.)	17-	0-	3=	20=	2
X	16	Cheboygan (9 yrs.)	9-	0-	2=	11=	1-1/10
X	17	Chippewa	2-	0-	0=	2=	1/5
	18	Clare	26-	2-	3=	31=	3-1/10
	19	Clinton	159-	0-	4=	163=	16-3/10
	20	Crawford	5-	0-	0=	5=	1/2
X	21	Delta	6-	0-	0=	6=	3/5
	22	Dickinson	1-	0-	0=	1=	1/10
	23	Eaton	248 -	0-	74=	322=	32-1/5
X	24	Emmet	2-	1-	1=	4=	2/5
	25	Genesee	41-	2-	14=	57=	5-7/10
	26	Gladwin	8-	0-	11=	19=	1-9/10
	27	Gogebic	0-	0-	0=	0=	0
X	28	Grand Traverse	30-	4-	15=	49=	4-9/10
	29	Gratiot	69-	5-	28=	102=	10-1/5
	30	Hillsdale	29-	1-	5=	35=	3-1/2
X	31	Houghton	3-	1-	0=	4=	2/5
	32	Huron	75-	7-	32=	114=	11-2/5
	33	Ingham	58-	5-	4=	67=	6-7/10
	34	Ionia	188-	6-	46=	240=	24
	35	Iosco	4-	0-	7=	11=	1-1/10
	36	Iron	0-	0-	0=	0=	0
	37	Isabella	27-	2-	6=	35=	3-1/2
	38	Jackson	49-	1-	21=	71=	7-1/10
	39	Kalamazoo	16-	1-	12=	29=	2-9/10
X	40	Kalkaska (9 yrs.)	7-	0-	1=	8=	4/5
	41	Kent	199-	0-	58=	257=	25-7/10
	42	Keweenaw	1-	0-	0=	1=	1/10

INTERMEDIATE SCHOOL DISTRICT TEN YEAR TRANSFER REPORT

Key:
1 - Transfers granted
2 - Transfers modified
3 - Transfers denied
4 - Ten year total
5 - Average for ten years
X - Indicates reorganization of Intermediate School Districts since 6-1-53

		1	2	3	4	5
43	Lake	7-	0-	7=	14=	1-4/10
44	Lapeer	201=	0-	179=	380=	38
45	Leelanau	0-	0-	0=	0=	0
46	Lenawee	248-	0-	65=	313=	31-3/10
47	Livingston	38-	0-	16=	54=	5-4/10
X 48	Luce	0-	0-	0=	0=	0
49	Mackinac	0-	0-	0=	0=	0
50	Macomb	20-	0-	8=	28=	2-8/10
51	Manistee	113-	0-	15=	128=	12-8/10
X 52	Marquette	7-	0-	0=	7=	7/10
53	Mason	103-	1-	7=	110=	11
X 54	Mecosta	23-	0-	10=	33=	3-3/10
55	Menominee	2-	0-	2=	4=	4/10
56	Midland	21-	0-	24=	45=	4-5/10
X 57	Missaukee	7-	0-	5=	12=	1-1/5
58	Monroe	28-	1-	21=	50=	5
59	Montcalm	86-	0-	23=	109=	10-9/10
X 60	Montmorency	0-	1-	0=	1=	1/10
61	Muskegon	26-	2-	12=	40=	4
62	Newaygo	45-	1-	12=	57=	5-7/10
63	Oakland	38-	0-	11=	49=	4-9/10
64	Oceana	55-	2-	1=	58=	5-8/10
65	Ogemaw	17-	0-	10=	27=	2-7/10
66	Ontonagon	1-	0-	0=	1=	1/10
X 67	Osceola	50-	7-	11=	68=	6-8/10
68	Oscoda	3-	0-	0=	3=	3/10
X 69	Otsego (9 yrs.)	27-	0-	5=	32=	3-1/5
70	Ottawa	19-	0-	17=	36=	3-8/10
X 71	Presque Isle (9 yrs.)	2-	0-	2=	4=	2/5
72	Roscommon	4-	0-	0=	4=	2/5
73	Saginaw	60-	5-	15=	80=	8
74	St. Clair	165-	0-	17=	182=	18-2/10
75	St. Joseph	83-	4-	31=	118=	11-8/10
76	Sanilac	55-	0-	50=	105=	10-5/10
X 77	Schoolcraft	0-	0-	0=	0=	0
78	Shiawassee	96-	12-	33=	141=	14-1/10
79	Tuscola	153-	9-	39=	201=	20-1/10
80	Van Buren	82-	0-	23=	105=	10-5/10
81	Washtenaw	52-	0-	23=	75=	7-5/10
82	Wayne	30-	0-	21=	51=	5-1/10
X 83	Wexford	21-	2-	20=	43=	4-3/10

[fol. 171]

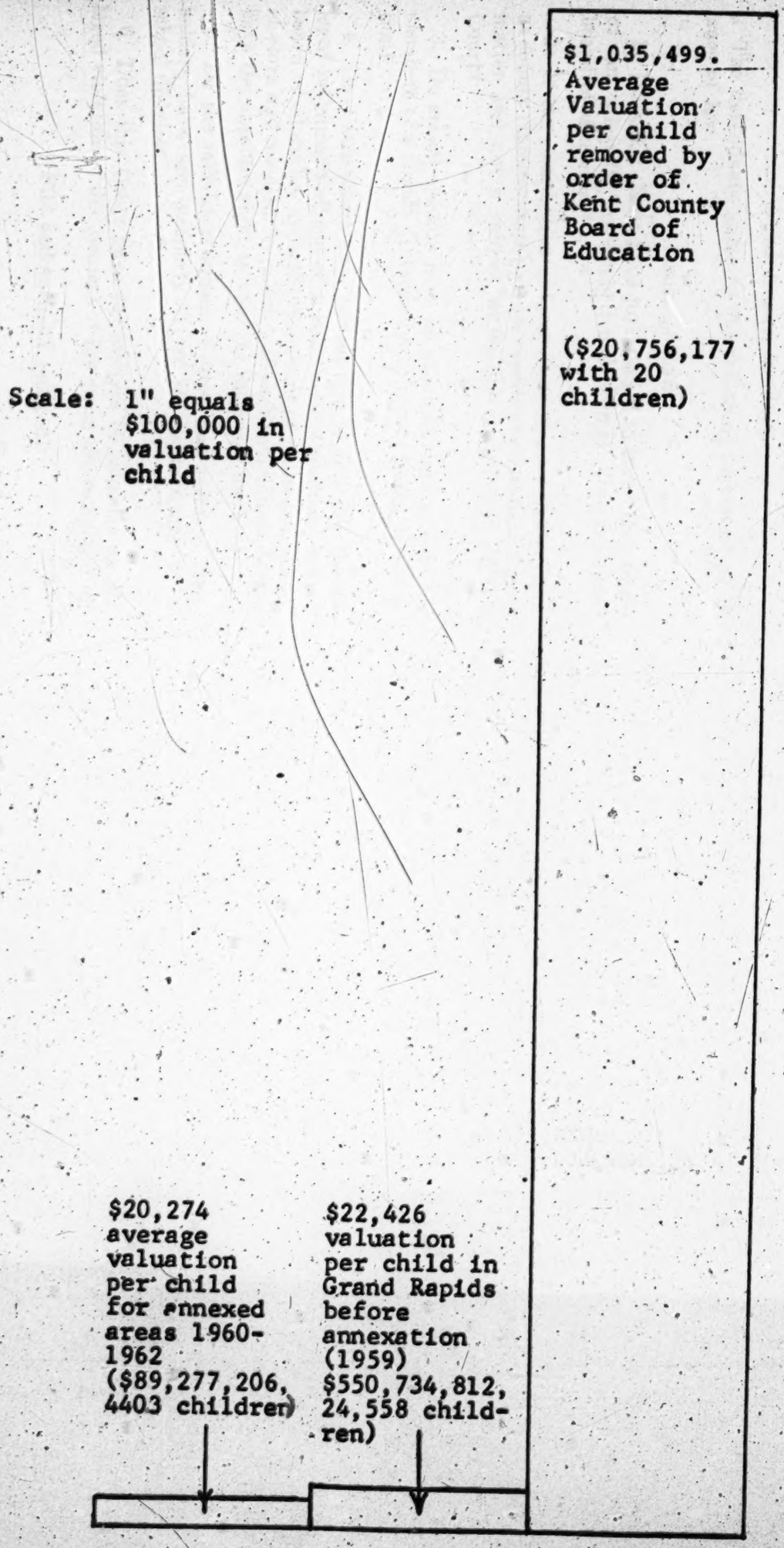
EXHIBIT 27

Transfers of territory between school districts ordered by defendant The Board of Education of the County of Kent and The Board of Education of The Kent Intermediate School District under the provisions of chapter 5, part 2 of the school code of 1955, as amended, since February 25, 1963 to the date of this stipulation.

63-4	Grand Rapids City to Godwin Heights (Paris #6fr) 4 petitions and 1 order entered	March 16, 1963
63-5	Forest Hills (Grand Rapids #15fr) to Lowell	April 15, 1963
63-6	Lowell Area to Rockford	April 15, 1963
63-7	Farrell (Ada 6fr) to Forest Hills	April 15, 1963
63-8	Talbot (Grattan 5fr) to Grattan Center (Grattan 1fr)	April 15, 1963
63-9	Grand Rapids to Grandville (Wyoming 1fr)	May 17, 1963
63-10	Dodge (Gaines #3) to Caledonia Community Schools	May 20, 1963
63-11	Hudsonville (4th Class #31, Ottawa Co.) to Byron Community Schools	June 4, 1963
63-12	Mapes (Lowell 6) to Lowell Area Schools	June 13, 1963
63-13	Talbot (Grattan 5fr) to Grattan Center (Grattan 1fr)	June 17, 1963
63-14	Rosenberger (Campbell #1-Ionia Co.) to Lowell Area Schools	June 13, 1963
63-15	Kent City (Tyrone 4fr) to Cedar Springs (Nelson 5fr)	July 2, 1963
63-16	Stinson (Courtland 1) to Rockford (Algoma 1fr)	July 15, 1963
63-17	Stinson (Courtland 1) to Rockford (Algoma 1fr)	July 15, 1963
63-18	Courtland Center (Courtland #3) to Benham (Courtland #5)	August 19, 1963
63-19	Grattan Center (Grattan 1fr) to Rockford (Algoma 1fr)	August 19, 1963
63-20	Lowell Area Schools (Lowell 1fr) to Forest Hills (Grand Rapids 15fr)	August 19, 1963
63-21	Stinson (Courtland 1) to Rockford (Algoma 1fr)	September 16, 1963
63-22	Stinson (Courtland 1) to Rockford (Algoma 1fr)	September 16, 1963

[fol. 172]

63-23	Coopersville (Ottawa 4th Class #26) to Kenowa Hills (Walker 16fr)	September 18, 1963
64-1	Ashley (Grattan #6fr) to Grattan Center (Grattan #1fr)	November 18, 1963
64-2	Mapes (Lowell #6) to Lowell Area Schools (Lowell #1fr)	November 18, 1963
64-3	Greenville to Rockford Public Schools (Algoma #1fr)	June 15, 1964
64-4	Benham (Courtland #5) to Cedar Springs (Nelson #5fr)	June 15, 1964
64-5	Stinson (Courtland #1) to Rockford (Algoma #1fr) Denied by State Board of Education on appeal	June 15, 1964
64-6	Stinson (Courtland #1) to Rockford (Algoma #1fr)	June 15, 1964
64-7	Hoag (Solon #8) to Kent City (Tyrone #4fr)	June 26, 1964
64-8	Grattan Center (Grattan #1fr) to Rockford (Algoma #1fr)	July 20, 1964
64-9	Courtland Center (Courtland #3) to Evans (Courtland #6fr)	July 20, 1964
64-10	Stinson (Courtland #1) to Rockford (Algoma #1fr) Denied by State Board of Education on appeal	August 17, 1964
64-11	Stinson (Courtland #1) to Rockford (Algoma #1fr)	August 17, 1964
64-12	Stinson (Courtland #1) to Rockford (Algoma #1fr)	August 31, 1964
64-13	Mapes (Lowell #6) to Lowell Area Schools	September 10, 1964
64-14	Coopersville to Kenowa Hills (Walker #16fr)	October 20, 1964
65-1	Godwin Heights (Paris #6fr) to Grand Rapids City	February 15, 1965



See paragraph 7a and 30 of the Statement of Facts.

[fol. 175]

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

[Title omitted]

ISSUES OF LAW AGREED TO BY DEFENDANTS—
Filed August 11, 1965

The defendants agree to the following statement of issues of law.

Issues of Law

1. Does this Court have jurisdiction to invalidate an act of an allegedly malapportioned county (intermediate) board of education?

2. Is the composition of local units of government, such as county (intermediate) school boards of education, a state matter and not a subject within the jurisdiction of this Court?

3. Do school electors have an absolute right to vote for members of a county (intermediate) school board of education?

4. Does this Court have jurisdiction to consider the alleged malapportionment of a county (intermediate) school board of education upon the complaint of individual school electors and resident freeholders if such individuals do not have the absolute right to vote for members thereof?

5. Do the individual school electors and resident freeholders have any property rights in the territory of a school district?

6. Does this Court have jurisdiction to consider an alleged violation of due process of law upon the complaint of

[File endorsement omitted]

individual school electors and resident freeholders in the alteration of the boundaries of school districts?

7. Are Title 42, § 1981 and § 1983 U.S.C. violated as alleged by plaintiffs?

8. Do plaintiffs-The Board of Education of the City of Grand Rapids, a school district created under the Constitution and laws of the State of Michigan, and the City [fol. 176] of Grand Rapids, created as a home rule city, under the Constitution and laws of the State of Michigan, have any rights, privileges or immunities which they may invoke in opposition to the will of their creator?

9. Do the individual plaintiffs, whether intervening or not, have standing to invoke the Fourteenth Amendment to the Constitution of the United States?

10. Does chapter 5, part 2 of the school code of 1955 (the transfer chapter) violate, in any respect, the Fourteenth Amendment to the Constitution of the United States?

11. Does this Court have jurisdiction over the Michigan State Board of Education, created pursuant to the 1908 and 1963 Michigan Constitutions?

12. If this Court has jurisdiction over the Michigan State Board of Education, do plaintiffs, whether intervening or not, have any rights, privileges or immunities guaranteed by the Fourteenth Amendment to the Constitution of the United States, in proceedings before that Board to alter boundaries of school districts?

13. If this Court has jurisdiction over the Michigan State Board of Education and if plaintiffs (whether intervening or not) have rights, privileges or immunities guaranteed by the Fourteenth Amendment to the Constitution of the United States, in proceedings before that Board to alter boundaries of school districts, were any of such rights, privileges or immunities violated by the action of the Michigan State Board of Education by its amended order entered June 5, 1963?

14. If this Court has jurisdiction of the subject matter to consider the alleged malapportionment of defendant Kent County (intermediate) Board of Education, were the members of the board de facto officers and is the action taken by them as such board on February 25, 1963 the action of a de facto public body and valid in all respects?

Dated: August 10, 1965.

Vanderveen, Freihofer & Cook, By George R. Cook, Attorneys for the Board of Education of the County of Kent and the individual defendants, Suite 111-G Waters Building, Grand Rapids, Michigan 49502.

Strawhecker and McCargar, By Paul O. Strawhecker, Attorneys for Defendant Kentwood Public Schools, Kent County, Michigan, 637 Michigan Trust Building, Grand Rapids, Michigan 49502.

Frank J. Kelley, Attorney General, Intervening Defendant, By Eugene Krasicky, Assistant Attorney General, Capitol Building, Lansing, Michigan.

[fol. 177]

UNITED STATES OF AMERICA

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Civil Action No. 4480

JAMES SAILORS and LORETTA SAILORS; SEYMOUR KONING and MILDRED KONING; GRAZZI MULLAY and ROSALIE MULLAY; and THE BOARD OF EDUCATION OF THE CITY OF GRAND RAPIDS, a second cla[illegible] school district, Plaintiffs,

WILLIAM A. DUTHLER and ANNA M. DUTHLER; HARVEY A. DUTHLER and EDNA M. DUTHLER; and THE CITY OF GRAND RAPIDS, a municipal corporation, Intervening Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, and VICTOR WELLER, DEWEY JAARSMA, MARY I. KEELER, RUSSEL EMMONS, and C. B. LEAVER, as members thereof, and THE KENTWOOD PUBLIC SCHOOLS, a school district of the fourth class, defendants,

ATTORNEY GENERAL OF THE STATE OF MICHIGAN, Intervening Defendant.

Before O'Sullivan, Circuit Judge, Kent, Chief District Judge, and Fox, District Judge.

Fox, District Judge.

OPINION—May 2, 1966

[fol. 178] This is an action brought by plaintiffs Sailors, Koning, and Mullay, and intervening plaintiffs Duthler, all formerly school electors of defendant Kentwood Public

[File endorsement omitted]

Schools, aaginst the Board of Education of the County of Kent (hereinafter called "Board"), and Kentwood Public Schools, a local school district. Suit was commenced on February 15, 1963.

As additional parties plaintiff in this case, there appear the City of Grand Rapids, and the Board of Education of the City of Grand Rapids, a second-class school district.

By popular vote of February 1962, three areas of Paris Township (Breton Avenue, Kendall, and Fuller-44th Street) were annexed to the City of Grand Rapids. Concomitantly, these areas were detached from defendant Kentwood school district and annexed to the plaintiff City of Grand Rapids school district. The annexation became effective on December 31, 1962.

A fourth area (Alger Street) was detached and annexed by vote of the legislative bodies of the township and city, and that territory likewise shifted school districts.

On January 1, 1963, the Board of Education of the defendant Kentwood Public Schools requested defendant Board to detach these four areas from plaintiff school district and transfer them to defendant Kentwood Public Schools.

Defendant Board accepted the transfer petitions, gave the statutory notice of its meeting, and on February 25, 1963, granted the transfer request without written opinion.

Plaintiffs appealed the decision to the State Board of Education, which entered an amended order on June 5, [fol. 179] 1963, exempting the property of the original plaintiffs from the transfer, as well as that of two other lot owners. Again, no written opinion was given.

By way of relief, plaintiffs seek to have this court set aside the transfers subsequent to the effective date of annexation, to declare that the defendant Board is unconstitutionally constituted, to enjoin any further elections until the misrepresentation is brought into balance, and to declare that the absence of any statutory standards governing the decisions of the county board of education is

violative of the Fourteenth Amendment due process guarantees, and constitutes an improper delegation of legislative authority.

Defendants contend that the court has no jurisdiction over the subject matter of the complaint, and that it has no power to set aside the acts of an allegedly malapportioned legislature.

Members of the county boards of education are elected in accordance with the procedure set forth in Michigan Statutes Annotated 15.3291 and ff. This is essentially a unit system of voting—each school district within the county receives one vote in the election of each of the five members of the county board.

By amendments to the law effective March 28, 1963 (M.S.A. 15.3294(1), and ff.), provision for popular election of county board members is available upon request of a majority of the local school boards, representing more than 50% of the children on the last school census.

These elections are held biennially on the first Monday of June, to select replacements for members whose terms [fol. 180] have expired. Under the applicable provision, not more than two members of the board may come from any one school district.

The county board of education exercises legislative, administrative, and quasi-judicial functions. Among these are the levying of *ad valorem* property taxes; collecting data on delinquent taxes; arranging for the taking of the school census; preparation of an annual budget; authority over special education programs and programs for the retarded; and authority to transfer territory from one school district to another.

In the present case, wide variation in the populations of the constituent school districts is prevalent. Nelson School District has a population of 99, and exercises one unit vote. Hoag School District has a population of 111, and one unit vote; Dodge School District, population 117 and one unit vote; Ashley School District, population 145 and one unit vote; Grand Rapids School District, population 201,777, or

55.6% of all people in Kent County, and one unit vote. (According to the 1960 decennial census.) In 1964 there were 39 school districts within Kent County. Thus in several school districts in Kent County, the voting strength of one voter approximates the voting strength of 200 voters in the Grand Rapids School District.

Furthermore, plaintiff Grand Rapids School District has 48.04% of the total number of school-age children in Kent County (1963 school census).

Similar inequality is found in the property valuation figures for the respective school districts.

The primary question is whether or not the guarantees of the equal protection clause of the Fourteenth Amendment to the Federal Constitution are extended to electors [fol. 181] of local school boards in the State of Michigan, which local boards elect intermediate (county) boards of education in accordance with a system paralleling the "county-unit" system invalidated by the Supreme Court in Gray v. Sanders, 372 U.S. 368, 83 S.Ct. 801, 9 L.Ed. 2d 821 (1963).

At oral argument learned counsel for defendant Kentwood School District pressed on the court the admonition not to enter the "political thicket." This phrase was coined by Mr. Justice Frankfurter in his opinion in the case of Colegrove v. Green, 328 U.S. 549, 66 S.Ct. 1198, 90 L.Ed. 1432 (1946), which sought to invalidate a scheme of state congressional districts for the reason that they differed greatly in population.

> "To sustain this action would cut very deep into the very being of Congress. *Courts ought not to enter this political thicket.* The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress. The Constitution has many commands that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action." (Emphasis supplied.) Id. at 556.

Mr. Justice Frankfurter's opinion in that case represented the views of three members of the court. Mr. Justice Rutledge joined in the result, giving a majority, expressing the view that the question was judicially cognizable, but that the particular case did not call for an exercise of the Court's jurisdiction.

In the decision in Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed. 2d 663 (1962), the majority held that lower federal courts have jurisdiction of the subject matter of a suit attacking a state apportionment act as unconstitutional on the grounds that it deprives the plaintiff of equal protection of the laws by debasing his vote, that a state apportionment statute violates the equal protection clause by effecting a gross disproportion in representation of the [fol. 182] voting population, and that a person qualified to vote for members of a state legislature has standing to challenge a state legislative apportionment statute as violative of the Fourteenth Amendment equal protection clause.

Justices Frankfurter and Harlan dissented on the grounds of non-justiciability.

In the spate of cases subsequently decided by the Supreme Court upholding the right to challenge malapportionment of state legislatures, the lone dissenter from that proposition has been Mr. Justice Harlan.

In Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964), Mr. Chief Justice Warren, in the opinion of the court, stated:

> *"We are cautioned about the dangers of entering into this political thicket and mathematical quagmires. Our answer is this: 'A denial of constitutionally protected rights demands judicial protection; our oaths and our office require no less of us.'* As stated in Gomillion v. Lightfoot, supra [364 U.S. 339, 5 L.Ed. 2d 110, 81 S.Ct. 125], 'When a state exercises power wholly within the domain of state interest, it is insulated from judicial review. *But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.'*

"To the extent that a citizen's right to vote is debased, he is that much less a citizen. * * * But the basic principle of representative government remains, and must remain, unchanged—the weight of a citizen's vote cannot be made to depend upon where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies. A citizen, a qualified voter, is no more or less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government of laws and not men. This is at the heart of Lincoln's vision of "government of the people, by the people, [and] for the people'." (Emphasis supplied.) Id. at 377 U.S. 566-7.

[fol. 183] The clear import of this language and of all the decisions handed down since that in Baker v. Carr, supra, is that the "political thicket" has been entered, courts will entertain actions of this nature, and relief will be granted in the proper case. Under the well established doctrine of *stare decisis*, then, the argument of counsel that this court ought not involve itself in a controversy of this sort is palpably untenable.

As to the standards to be applied, Mr. Chief Justice Warren, again in Reynolds v. Sims, supra, made the following observations:

"We indicated in Baker, however, that the Equal Protection Clause provides discoverable and manageable standards for use by lower courts in determining the constitutionality of a state legislative apportionment scheme, and we stated:

'Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Pro-

tection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action.'" (Footnote omitted.) Id. at 377 U.S. 557.

(Discussing Gray v. Sanders, supra):

"Continuing, we stated that 'there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the state.' And finally, we concluded: 'The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments, can mean only one thing—one person, one vote.'" (Footnote omitted.) Id. at 377 U.S. 558.

[fol. 184] The power of the court to act in this situation is thus clear—the question remains as to whether it should forbear from acting, and this requires a scrutiny of the facts in light of the Supreme Court cases.

Initially, there can be no question, from the most cursory glance at the facts of this case, that there is a gross disparity, amounting to invidious discrimination, between the representation afforded the Grand Rapids School District on the Kent Intermediate Board of Education and the representation of other constituent school districts on the Board. In the use of the term "invidious," I in no way convey any connotation of bad faith. For a legislature, acting with the best of intentions in passing legislation of the type here concerned, may inadvertently provide the means by which "sophisticated discrimination" may result from the execution of the statute's provisions.[1]

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[1] See WMCA v. Lomenzo, 377 U.S. 633, 653, 84 S.Ct. 1418, 12 L.Ed. 2d 568, 580 (1964).

We must now inquire as to whether or not this court should refrain from acting because the controversy before it concerns government on the county level, while the decided Supreme Court cases have thus far applied the guarantees of the equal protection clause of the Fourteenth Amendment only to voters' rights on the state level.

> "Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in Hunter v. City of Pittsburgh, 207 US 161, 178, 52 L ed 151, 159, 28 S Ct 40, these governmental units are 'created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them,' and the 'number, nature and duration of the powers conferred upon [them] . . . and the territory over which they shall be exercised rests in the absolute discretion of the State.'" Reynolds v. Sims, supra, at 377 U.S. 575.

[fol. 185] In City of Muskegon v. County of Muskegon, File No. 15983, Muskegon Circuit Court, the court said:

> "The County, on the other hand is a political subdivision of the state. It is superimposed by a sovereign and paramount authority, as a governmental agent of the State, to perform primarily the functions of the State locally and within its boundaries. It is a 'body politic and corporate'. It is created as an arm of the sovereign government of the State for purposes essential to the proper functioning of that government in matters which relate to the civil administration, finances, maintenance of the peace, public welfare, and especially for the administration of justice through the maintenance of courts of original trial jurisdiction,

such as the Circuit Court. This latter function, of course, includes the establishment of jails for the confinement and punishment of those who have been guilty of offenses against the criminal laws of the State of Michigan.

"The County is generally a subordinate part of the sovereignty of the State itself. 20 C.J.S. 753, Section 1; 14 Am.Jur. 186, Sec. 4. There is a logical basis for drawing distinction between Counties and ordinary municipal corporations, Cities. Counties are created by the State in the exercise of its own sovereign power without the particular solicitation, consent, or concurrence of the people who inhabit them. In Michigan, the Counties owe their creation to the constitution and statutes which confer upon them all the powers they possess, prescribe their duties and impose the liabilities to which they are subject. With scarcely an exception, all the powers and the functions of the County organization have a direct and exclusive reference to the general policies of the State of Michigan, and, in fact, counties are only a branch of the general administration of that policy.

"On the other hand, municipal corporations, such as chartered cities, are more amply endowed with corporate life and function. They exist under general or special charters conferred at the direct solicitation or by the free consent of the people who compose them. They are created chiefly for the interest, advantage and convenience of their inhabitants. The distinction between a municipal corporation and a political subdivision of the state, such as a County, relates both to the purposes for which they are created and the method of their creation.

"Thus, the organization of the City is asked for, or at least, consented to by the people it embraces. A County is imposed by a sovereign and paramount authority, it is created by the sovereign power of the

State, of its sovereign will, without the particular solicitation, consent or concurrent action of the people who inhabit them. Bar v. Schintz, 194 Wis. 397, 216 N.W. 509; McQuillan on Municipal Corporations, Section 12, Vol. 1; Young vs. Juno County, 192 Wis. 646, 212 N.W. 295; Miller vs. Manistee Board of Road Com-
[fol. 186] missioners, 297 Mich. 487; City of Detroit vs. O'Connor, 302 Mich. 531; Crowley vs. Clark County, 261 N.W. 221; Campbell vs. Board of Commissioners, 30 F. 2d 910; County of Door vs. A.F. of L., et al. 4 Wis. 2d, 142, 89 N.W. 2d 920 (1958); Green County vs. City of Monroe, supra."

Obviously, therefore, the Kent Intermediate Board of Education is an arm of the State, albeit acting on a local level.

The Supreme Court has made crystal clear, in sweeping language, the right which is involved in these cases. Beginning with Gray v. Sanders, supra, which dealt with statewide primaries for United States Senator and state officers, Mr. Justice Douglas stated the majority view to be:

> "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment." Id. at 372 U.S. 379.

This view continues through Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed. 2d 481 (1964), involving congressional elections, in which Mr. Justice Black stated that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's," (Id. at 376 U.S. 8), and culminates with Reynolds v. Sims, supra, in which it was held that both houses of state leg-

islatures must be apportioned on a population basis, Mr. Chief Justice Warren commenting that "the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a state." (Id. at 377 U.S. 560-1).

[fol. 187] Thus, it is beyond objection that it is the right to vote on an equal basis, whether under Article I, §2, of the Federal Constitution, or the Equal Protection Clause of the Fourteenth Amendment, which is guaranteed in these cases.

Nakedly implicit in this proposition is that equal voting rights carry a right to fair representation of the voting public by the elected official.

> "But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less." Reynolds v. Sims, supra, at 377 U.S. 565.

Numerous courts have passed favorably on the proposition that the effect of these decisions does reach the statewide level. See Ellis v. Mayor and City Counsel, 352 F. 2d 123 (CCA 4, 1965); Bianchi v. Griffing, 238 F.Supp. 997 (D.C. E.D. N.Y., 1965); Damon v. Lauderdale County Election Commissioners, C.A. 1197-E (D.C. S.D. Miss., October 21, 1964); State v. Sylvester, 26 Wis. 2d 43, 132 N.W. 2d 249 (1965); and Brouwer v. Bronkema, Case No. 1855 (Kent

County, Michigan, Circuit Court, September 11, 1964).[2] I am convinced that the facts of this case admit of no other course than to reach a similar decision.

[fol. 188] In the Bianchi case, supra, the order of the three-Judge court retaining jurisdiction pending political action in reapportioning a county board of supervisors, denying a requested injunction and defendants' motion to dismiss, was appealed to the United States Supreme Court by the defendants. Plaintiff-appellee moved to dismiss the appeal on the grounds that it was an attempt to appeal a non-reviewable order.

Although defendant-appellants' brief (p. 8) raised the "vitally important question of whether the Equal Protection Clause of the Fourteenth Amendment in respect to reapportionment extends to the lowest level of local government," the Supreme Court in a one-line opinion stated: "The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction." 382 U.S. 15, 86 S.Ct. 52, 15 L.Ed. 2d 11 (1965).

Although the Supreme Court was squarely faced with the issue of whether or not the trial court had jurisdiction in cases involving equality of voting rights for election of officials in county and local units of government, it chose to decide the Bianchi case on the narrow ground of lack of jurisdiction under 28 USC §1253 (because the order appealed from was not, in the Court's view, a final order), thus leaving the case in precisely the same status as my decision in the instant case.

The Kent Intermediate Board of Education, as do all such Boards in the State of Michigan, exercises powers of a legislative, as well as administrative and quasi-judicial,

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[2] The Brouwer case was the first case decided after Reynolds v. Sims, supra, which applied its rule on the county level. Judge Fred N. Searl's cogent opinion in that case has drawn the well deserved attention of the courts above and is certain to figure prominently in the work of textwriters. See, for example, Weinstein, The Effect of Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government, 65 Col. L.R. 21, note 2.

character. When questioned as to the nature of the Intermediate Boards of Education, specifically, whether or not they were representative bodies, the Assistant Attorney General averred that he did not think so, in the accepted sense of the term. He also contended that plaintiffs [fol. 189] here had no judicially cognizable right in the territory of the school district, and therefore were without standing to prosecute this action.

As pointed out above, the right involved is the right to vote for a representative body, and it cannot be seriously contended that the Kent Intermediate Board of Education, and its kin across the State, are not representative bodies.

Most apparent is the fact that they are originally organized on a county basis. As such, they dictate, direct and supervise general operations of schools within the county. Obviously they would not be established on a county, or any other geographical basis, unless intended to represent that particular area.

Of significance also is the following quotation from the case of School District of the City of Lansing v. State Board of Education, 367 Mich. 591, 116 N.W. 2d 866, 868:

> "Unlike the delegation of other powers by the legislature to local governments, education is not inherently a part of the local self-government of a municipality except insofar as the legislature may choose to make it such. Control of our public school system is a State matter delegated and lodged in the State legislature by the Constitution. The policy of the State has been to retain control of its school system, to be administered throughout the State agencies organized with plenary powers to carry out the delegated functions given it by the legislature."

An analysis of this state of affairs leads to the unalterable conclusion stated above. In these days of growing national concern over the status of education in this country, it need hardly be stated that education is a matter of intense importance to the population.

[fol. 190] In Michigan, this public school system is "delegated and lodged in the State legislature by the Constitution." The Michigan legislature, in accordance with the apportionment decisions of the United States Supreme Court, has redistricted itself and acts as an apportioned body. This legislature has also undertaken hearings on the problem of establishing county boards of supervisors on a representative basis, thus showing its responsiveness to recent court decisions.

Thus, under the Michigan Constitution, Article VIII, Section 2, education of the children of the citizens of this State is to be provided for by the state legislature, an apportioned body, fairly representative of the people of the State.

The legislature, through the statute challenged here, has delegated its functions in this area to a local state agency, to be carried out by that agency. The method by which this is done has already been explained, and results in the virtual muting of the voices of 55.6% of the people in Kent County in the area of public education.

Thus, to permit this system to stand would be to allow the legislature to completely nullify the result of Reynolds v. Sims, supra, by simply delegating powers under the same sort of scheme as now exists for the election of members of the Kent Intermediate Board of Education. For even though members of local school districts are elected by popular election, the election of the five members of the Intermediate Board is by majority vote of the constituent school districts in the county, regardless of the respective populations of the several school districts.

The Supreme Court has spoken clearly on this point:

[fol. 191] "However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant undervaluation of the weight of the votes of certain of a State's citizens merely because of where they happen to reside." WMCA v. Lomenzo, 377 U.S. 633, 653, 84 S.Ct. 1418, 12 L.Ed. 2d 568, at 580.

And again, in Reynolds v. Sims, supra, the Court said:

"And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable. * * * The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. Two, five, or 10 of them must vote before the effect of their voting is equivalent to that of their favored neighbor. Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable. One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination.' Lane v. Wilson, 307 US 268, 83 L ed 1281, 1287, 59 S Ct 872; Gomillion v. Lightfoot, 364 US 339, 342, 5 L ed 110, 113, 81 S Ct 125. As we stated in Wesberry v. Sanders, supra:

'We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of in-

habitants. To say that a vote is worth more in one district than in another would . . . run counter to our fundamental ideas of democratic government.'" Id. at 377 U.S. 562-3.

To say that a citizen, guaranteed by his state constitution that the public education of his children shall be provided for by the state legislature, an apportioned body directly [fol. 192] responsible to him, can be denied this fair representation by the action of that legislature in delegating this function to a statutorily created agency of the state which is not responsive to the population on an equal representation basis, is to be completely out of spirit with the announced decisions of the United States Supreme Court, and allows a limitless circumvention of the rule posited by that Court in Reynolds v. Sims, supra.

True it may be that a Michigan citizen has no inherent right to vote for matters concerning education. Suffice it to say that the Michigan Constitution provides that such a person will be fairly represented in such matters.

However, in the instant case the legislature has chosen to give citizens of Michigan such a right, and the argument that since such a right is a matter of grace with the legislature it can be rendered inconsequential by the bestowing hand is sophistry of the highest order.

More importantly, as noted in Reynolds v. Sims, supra, the right to vote is personal. Once it is conferred by the state, "all who participate in the election are to have an equal vote." Gray v. Sanders, supra, at 372 U.S. 379.

Although the manner in which a state distributes power among its governmental organs is commonly a question for the state itself, Highland Farms Dairy, Inc. v. Agnew, 300 U.S. 608, 612, 57 S.Ct. 549, 81 L.Ed. 835, 840 (1937), the state in distributing such power shall not use it "as an instrument for circumventing a federally protected right." Gomillion v. Lightfoot, 364 U.S. 339, at 347, 81 S.Ct. 125, 5 L.Ed. 2d 110, at 117 (1960).

[fol. 193] In point of fact a Michigan citizen can vote for the person responsible for providing for his child's education—his elected representative in the legislature, and Reynolds v. Sims, supra, guarantees him that his vote will be counted equally, or nearly so, with that of every other vote. Under the arrangement now countenanced by M.S.A. 15.3294(1) and ff., the value of that vote on educational matters is greatly weakened. Thus, we see the voting power of some qualified voters grossly dilated, while that of others is grossly diluted. This is a classic situation of sophisticated invidious discrimination, and the statute to this extent must be declared unconstitutional.

We are not here concerned with the nature or structure of governmental units as such. The relevance of "one man, one vote" to the present case is not an extension of the rule laid down by Reynolds v. Sims, supra, but, rather it is a precise application of Reynolds to its intended purpose —to secure a constitutionally protected right to individual citizens. Under the authority of Reynolds and other decisions of the United States Supreme Court herein discussed, I can see no warrant to arbitrarily cut off the citizens' right to fair representation at the county level.

Since the majority opinion differs substantially as to the consequences of my conclusion, it may be well at this point to indicate exactly what is and what is not involved here. This is not a situation in which the legislature has appointed a commission or board—no one is contending for a right to vote for appointed officials. The legislature has not chosen to appoint Boards for each of the Intermediate School Districts in the State of Michigan, in which case the function of providing for public education would be delegated, but not, legislatively speaking, the responsibility. For in that situation, the legislature would have dele- [fol. 194] gated the function of providing for public education, but the appointees would have been directly responsible to the legislature, an equally apportioned body directly responsible to the people.

But here the legislature has delegated not only the function, but also the responsibility, which would not be objectionable but for the gross malapportionment in the existing system of selecting the Board. For under that system the members of the Board are not directly responsible to the legislature, but to the people by reason of the vote which the legislature has given them through M.S.A. 15.3294(1) and ff. Since the vote is not given on a fairly apportioned basis, the responsibility is fractionalized, and the Board is, in effect, more responsible to the minority than to the majority.[3]

The Assistant Attorney General has argued that the statute itself provides for popular election of board members (M.S.A. 15.3294(2) and (3)), and that certain reorganized districts have popularly elected Boards, as provided in M.S.A. 15.3302(1).

The procedure outlined in M.S.A. 15.3294(2) and (3) is constitutionally unacceptable, requiring as it does that a majority of constituent school districts, representing more than 50% of the children on the last school census in the county district, must adopt resolutions in favor of such a procedure. The problem with this plan is that the Grand Rapids School District, with 48.04% of the school-age children in the Kent Intermediate School District, and 55.6% of the total population, would need the votes of [fol. 195] nineteen other school districts (there being a total of 39 in Kent County) to bring about a popular election. Thus again, patently, a small minority has effective power to frustrate the will of the great majority.

As to those intermediate school districts now functioning under popularly elected Boards, as provided by M.S.A. 15.3302(1), no problem is envisioned, since that statute is

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[3] For one writer's view of the status of county government after the recent Supreme Court decisions, see Weinstein, supra, Note 1. Professor Weinstein seems to be of the opinion that, although a person does not necessarily have a right to participate in the control of every state agency, when a state agency is controlled by voters, all voters must be treated as equally as possible. Id. at 33.

not attacked and a Board which is fairly representative would not be subject to attack.

Following the well established principle that the acts of a *de facto* body have full legal effect, the court is not disposed to grant plaintiffs this facet of the relief they seek. The possible harm in setting a precedent of this sort, even on the facts of this case, is viewed as more to be shunned than the harm resulting to individual plaintiffs by allowing the transfer to stand. Orderly functioning of government demands no less. See Johnson v. Genesee County, 232 F.Supp. 567 (E.D. Mich., 1964); Scholle v. Hare, 367 Mich. 176, 116 N.W. 2d 350; Williams v. Secretary of State, 145 Mich. 447, 108 N.W. 749; and State v. Sylvester, supra. The preferable course is to allow a properly apportioned body to remedy whatever ills have come about by acts of its malapportioned state, and this is the policy which this court will follow.

The rights involved in this case being voting rights, and as such, personal, plaintiff Board of Education of the City of Grand Rapids and intervening plaintiff City of Grand Rapids are held to have insufficient standing to remain as parties to this action. This is succinctly stated in Reynolds v. Sims, supra.

> [fol. 196] "As stated by the Court in United States v. Bathgate, 246 US 220, 227, 62 L ed 676, 680, 38 S Ct 269, '[t]he right to vote is personal . . .'[39]
>
> 39. As stated by Mr. Justice Douglas, the rights sought to be vindicated in a suit challenging an apportionment scheme are 'personal and individual,' South v. Peters, 339 US, at 280, 94 L. ed at 838, and are 'important political rights of the people,' MacDougall v. Green, 335 US 281, 288, 93 L ed 3, 69 S.Ct 1 (Douglas, J., dissenting.)" Id. at 377 U.S. 561. (Footnote by the Court.)

However, the parties should be permitted to remain in the case as amicus curiae.

Finally, there is a motion before the court to add the State Board of Education as a party defendant. Plaintiffs

allege that their appeal of the decision to transfer the disputed area to the Kentwood School District, seeking to have them transferred back to the Grand Rapids School District, was decided in an arbitrary and capricious manner, and without due process of law. The State Board did place individual plaintiffs in the Grand Rapids School District.

By decision of this court, whereby it will not overturn the acts of the *de facto* Kent Intermediate Board, it would appear that the issue on this particular point is moot, unless individual plaintiffs desire a complete return to the status quo, and wish to be placed once more in the Kentwood District, which is apparently not the case.

Thus, M.S.A. 15.3294(1) and ff. should be declared to be unconstitutional as in violation of the Equal Protection Clause of the Fourteenth Amendment, insofar as Board elections are concerned.

This court should retain jurisdiction of the action and unless the 1966 legislature were to take reasonable steps [fol. 197] to correct this legislation in accordance with this opinion, allow plaintiffs to apply for additional relief.

Noel P. Fox, District Judge.

Appendix

Since the writing of this opinion, two cases reaching opposite results on the question here presented have been considered by the Supreme Court of the State of Michigan. (Brouwer v. Bronkema, Knudsen v. Klevering, opinions filed April 5, 1966 [Black, J., filed an opinion April 6, 1966, which created an even split on the decision]).

That court divided evenly on the issue raised by those two cases (which is the issue here), thus leaving the matter in a status which, at best, can be characterized as confused.

Thus, a citizen of Michigan has no effective recourse in situations such as this save the Federal Court.

Citizens of other states have been afforded relief from this type of malapportionment on boards of supervisors,

Bianchi v. Griffing, supra (N.Y.), Damon v. Lauderdale County Election Commissioners, supra (Miss.), State v. Sylvester, supra (Wis.); on a city council, Ellis v. Mayor and City Council, supra (Md.); and on a district school board, Delozier v. Tyrone Area School Board, 247 F.Supp. 30 (D.C. W.D. Pa., 1965).

The scope of the Fourteenth Amendment's equal protection clause is not so restricted as to overlook discrimina- [fol. 198] tion on the slender basis that it occurs at the county level. The protection of that Amendment is extended to anyone whose constitutional rights have been impinged by invidiously discriminatory state action, wherever that action may ultimately occur. See, e.g., Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886).

Justice Matthews' opinion in Yick Wo is apropo and prophetic. At page 370, 118 U.S., he said:

> "But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.' For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.
>
> "There are many illustrations that might be given of this truth, which would make manifest that it was self-evident in the light of our system of jurisprudence. The case of the political franchise of voting is one. Though not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will, under certain conditions, nevertheless it is

regarded as a *fundamental political right, because preservative of all rights.*" (Emphasis supplied.)

The right to vote is a fundamental right which ranks in importance along with freedom of speech, press, assembly, and religion. NAACP v. Button, 371 U.S. 415, 9 L.Ed. 2d 405, 83 S.Ct. 328; Sherbert v. Verner, 374 U.S. 398, 10 L.Ed. 2d 965, 83 S.Ct. 1790; Wieman v. Updegraff, 344 U.S. 183, 97 L.Ed. 216, 73 S.Ct. 215; NAACP v. Alabama, 357 U.S. 449, 2 L.Ed. 2d 1488, 78 S.Ct. 1163; Bates v. Little Rock, 361 U.S. 516, 4 L.Ed. 2d 480, 80 S.Ct. 412; DeJonge v. Oregon, 299 U.S. 353, 81 L.Ed. 278, 57 S.Ct. [fol. 199] 255; Shelton v. Tucker, 364 U.S. 479, 5 L.Ed. 2d 231, 81 S.Ct. 247; Staub v. Baxley, 355 U.S. 313, 2 L.Ed. 2d 302, 78 S.Ct. 277.

To reiterate: as my opinion makes clear, the Supreme Court has declared the right to vote on an equal basis to be personal and protected, and the result which I here urge merely applies the guarantee of the Fourteenth Amendment to this right.

[fol. 200]

UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Civil Action No. 4480

JAMES SAILORS, et al., Plaintiffs,

vs.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, et al., Defendants.

Before: O'Sullivan, Circuit Judge, Kent, Chief Judge, and Fox, District Judge.

KENT, Chief Judge with whom O'SULLIVAN, Circuit Judge, concurs.

The facts and issues in connection with this case are very ably set forth in the opinion of Judge Fox. We find ourselves in a position where we concur with Judge Fox, writing for the Court, in reaching the conclusion that this Court will not overturn the acts of the de facto Kent Intermediate Board. We cannot concur in the conclusion wherein the statute creating such Intermediate Board of Education, M.S.A. 15.3294(1) et seq., is declared to be unconstitutional as in violation of the equal protection clause of the Fourteenth Amendment. Because of our holding this Court does not retain jurisdiction of the action.

The matter of malapportionment of boards and agencies of the states and their subsidiaries has not yet been before the United States upreme Court. We recognize the impact of the cases to which reference is made in Judge Fox's opin-

ion, but do not agree that the decisions to which reference is therein made require the District Courts of the United States to review the manner of apportionment and constitution of each and every board and agency of the several states, cities, villages, counties, parishes, townships, metropolitan districts, and all other such policy and decision making bodies which are in existence for the purpose of carrying out the intent of the legislatures which authorize their creation.

[fol. 201] *Reynolds* v. *Simms*, 377 U.S. 533, 84 S.C. 1362, 12 L.Ed. 2d 506, is unquestionably authority for the "one man one vote" premise to be used in the apportionment of state legislatures. Citations of authority have been given in Judge Fox's opinion which he concludes would authorize the imposition of this same premise upon every agency of every body of government in existence in this country today. With this we are not in accord.

We prefer the result reached in *Johnson* v. *Genesee County, Michigan*, 232 F.Supp. 567 (E.D. Mich. 1964), wherein Judge Stephen Roth states at page 572: "Under the prevailing view of the United States Supreme Court, as we have pointed out above, the composition of local units of government is held to be a state matter. Under the rule of stare decisis, this Court is not free to consider the subject of the apportionment of representation on local legislative bodies. It may well be that the time will come when the application of the Fourteenth Amendment will be extended that far. The more likely development is that the June 15, 1964, rulings of the Supreme Court in cases dealing with the state legislatures of Alabama, New York, Maryland, Delaware, Virginia, and Colorado will result in legislatures in our states which will be proportionately representative of people, and therefore, likely to themselves establish in local legislative bodies a vastly different balance between people and governmental power."

We recognize that the Supreme Court of the United States may at some time in the future reach the conclusion that the District Courts of the United States have the

power and duty to prescribe guide lines for the selection of the many boards and commissions created and organized in connection with local government. We are satisfied that the Supreme Court of the United States has not yet reached that point. We are satisfied that we should not anticipate that the Supreme Court will reach that point.

For the reasons herein stated an order may be entered dismissing the complaint.

[fol. 202]

UNITED STATES OF AMERICA

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Civil Action No. 4480

JAMES SAILORS and LORETTA SAILORS; SEYMOUR KONING and MILDRED KONING; GRAZZI MULLAY and ROSALIE MULLAY; and THE BOARD OF EDUCATION OF THE CITY OF GRAND RAPIDS, a second class school district, Plaintiffs,

WILLIAM A. DUTHLER and ANNA M. DUTHLER; HARVEY A. DUTHLER and EDNA M. DUTHLER; and THE CITY OF GRAND RAPIDS, a municipal corporation, Intervening Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, and VICTOR WELLER, DEWEY JAARSMA, MARY I. KEELER, RUSSELL EMMONS, and C. B. LEAVER, as members thereof, and THE KENTWOOD PUBLIC SCHOOLS, a school district of the fourth class, Defendants,

ATTORNEY GENERAL OF THE STATE OF MICHIGAN, Intervening Defendant.

ORDER OF DISMISSAL—May 2, 1966

This matter is before a three-judge Court comprising the Honorable Clifford O'Sullivan, United States Circuit Judge, the Honorable W. Wallace Kent, Chief Judge, United States District Court and the Honorable Noel P. Fox, United States District Judge, on the complaint, as amended, seek-

ing relief to have this Court declare the defendant county board of education unconstitutionally composed and to declare the statutory standards governing the decisions of the county board of education violative of the Fourteenth Amendment and constitute an improper delegation of legislative authority, and the said Court, Judge Noel P. Fox dissenting, after having heard the proofs and allegations of the parties and due consideration of briefs submitted, having filed written opinion for an order dismissing the complaint;

It Is Hereby Ordered that the complaint herein, as amended, be and the same is hereby dismissed.

Dated: May 2, 1966

[fol. 203]

UNITED STATES OF AMERICA

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 16, 1966

I. Notice is hereby given that James Sailors and Loretta Sailors; Seymour Koning and Mildred Koning; Grazzi Mullay and Rosalie Mullay and The Board of Education of the City of Grand Rapids, a second class school district; and William A. Duthler and Anna M. Duthler; Harvey A. Duthler and Edna M. Duthler, the plaintiffs and intervening plaintiffs, above named hereby appeal to the Supreme Court of the United States from the final order dismissing the complaint, entered in this action on May 2, 1966. This [fol. 204] appeal is taken pursuant to 28 U.S.C. Sec. 1253.

[File endorsement omitted]

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

Complaint, dated February 12, 1963

Answer of Defendant Kentwood Public Schools, dated August 11, 1964

Answer of The Board of Education of the County of Kent, dated April 21, 1965

Stipulation of Facts, dated April 30, 1965

District Court Opinion, dated May 2, 1966

Order of Dismissal, dated May 2, 1966.

III. The following question is presented by this appeal.

"The primary question is whether or not the guarantees of the equal protection clause of the Fourteenth Amendment to the Federal Constitution are extended to electors of local school boards in the State of Michigan, which local boards elect intermediate (county) boards of education in accordance with a system paralleling the 'county-unit' system invalidated by the Supreme Court in *Gray* v. *Sanders*, 372 U.S. 368, 83 S.Ct. 801, 9 L.Ed. 2d 821 (1963)." [Per District Judge Fox, page 3 of dissenting opinion, and concurred in by Circuit Judge O'Sullivan and District Judge Kent, page 1 of majority opinion.]

Dated: June 16, 1966.

Wendell A. Miles, Attorney for Appellants, Business address: 311 Waters Building, Grand Rapids, Michigan 49502;

[fol. 205] Roger D. Anderson, Attorney for Appellants, Business address: 1107 Mich. Nat'l Bank Building, Grand Rapids, Michigan 49502.

Affidavit of Service (omitted in printing).

[fol. 206]

SUPREME COURT OF THE UNITED STATES

No. 430—October Term, 1966

JAMES SAILORS, et al., Appellants,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, et al.

ORDER NOTING PROBABLE JURISDICTION—December 5, 1966

Appeal from the United States District Court for the Western District of Michigan.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

December 5, 1966

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. _____

JAMES SAILORS, et al.,
Appellants,

vs.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, et al.,
Appellees.

JURISDICTIONAL STATEMENT

This is an appeal by James Sailors, *et al*, from a judgment entered on May 2, 1966, by the District Court of the United States for the Western District of Michigan, Southern Division, by a three-judge statutory court specially convened under the provisions of 28 U.S.C. Sec. 2281. This Statement is submitted by appellants to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial federal question is presented.

OPINIONS BELOW

The majority and dissenting opinions of the District Court are reported in 254 F. Supp. 17 (D.C. W.D. Mich. 1966) and a copy of the majority opinion is appended to this jurisdictional statement as Appendix A, at p. 1a. The dissenting opinion of District Judge Fox is appended to this statement as Appendix B, at p. 3a.

The judgment of the District Court is appended as Appendix C, at p. 24a.

JURISDICTION

This suit was instituted by appellants under 42 U.S.C. §§ 1981, 1983; 28 U.S.C. §§ 1331, 1343 seeking an injunction and declaratory relief restraining the enforcement, operation and application of Section 294 of the Michigan School Code,[1] appellants being denied full and equal voting rights and full and equal representation in the election of members of the governing board of The Board of Education of the County of Kent, a school district under Michigan law exercising jurisdiction county-wide, as secured by the provisions of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

Notice of appeal to this Court was filed on June 16, 1966.

The jurisdiction of this Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1253.

The following decisions sustain the jurisdiction of this Court to review the judgment on appeal in this case: *Nixon v. Herndon*, 273 U.S. 536; *Smiley v. Holm*, 285 U.S. 355; *United States v. Classic*, 313 U.S. 299; *United States v. Saylor*, 322 U.S. 675; *Baker v. Carr*, 369 U.S. 186; *Gray v. Sanders*, 372 U.S. 368; *Wesberry v. Sanders*, 376 U.S. 1; *Reynolds v. Sims*, 377 U.S. 533; *WMCA v. Lomenzo*, 377 U.S. 633; *Davis v. Mann*, 377 U.S. 678; *Roman v. Sincock*, 377 U.S. 695; *Lucas v. Colorado General Assembly*, 377 U.S. 713.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The United States Constitution, Amendment XIV, § 1, is set forth in Appendix D, at page 25a.

42 U.S.C. §§ 1981 and 1983 and 28 U.S.C. §§ 1331 and 1343 are set forth in Appendix E, at page 26a-27a.

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[1] C.L. Mich. '48 §340.294; M.S.A. §15.3294.

Section 294 of the Michigan School Code,[2] and 294(a) of the Michigan School Code,[3] which replaced Section 294 (initially sought to be invalidated) are set forth in Appendix F, at page 27a-30a.

QUESTION PRESENTED

"The primary question is whether or not the guarantees of the equal protection clause of the Fourteenth Amendment to the Federal Constitution are extended to electors of local school boards in the State of Michigan, which local boards elect intermediate (county) boards of education in accordance with a system paralleling the 'county-unit' system invalidated by the Supreme Court in *Gray v. Sanders*, 372 U.S. 368, 83 S.Ct. 801, 9 L. Ed. 2d 821 (1963)." [As stated by District Judge Fox, dissenting opinion, Appendix B, page 6a, and concurred in by Circuit Judge O'Sullivan and District Judge Kent, majority opinion, Appendix A, page 1a-2a.]

STATEMENT OF THE CASE

The individual appellants, as citizens of the United States and the State of Michigan, and as qualified and registered electors of each brought suit to enjoin the enforcement and operation of Section 294 of the Michigan School Code,[4] pertaining to the county-unit system of electing county school board members. When Section 294a,[5] replaced Section 294, by appropriate amendment to the complaint the new provision, which continued the county-unit devise, was also sought to be invalidated.

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[2] *Supra* footnote 1.

[3] C.L. Mich. '48 §340.294a; M.S.A. §15.3294(1).

[4] *Supra* footnote 1.

[5] *Supra* footnote 3.

In Michigan, school board members for county school districts are elected by a Georgia-type county-unit system which was struck down in *Gray v. Sanders supra*,[6] specifically, school board members in each local school district within the county are elected at at-large elections to terms of 3 years, staggered so that the term of one or more board members expires each year. One school board member from each local school district within the county attends a biennial meeting called by the county superintendent of schools to elect and fill the seats of county school board members whose terms are expiring. There are 5 county school board members elected to staggered 6 year terms. At the biennial election, election is by majority vote of those present with the representative of the people in each local school district having one vote irrespective of the number of people represented. Federal census figures by school districts were not available except in the case of Grand Rapids where the boundaries were the same as that of the City of Grand Rapids. A special census was taken in 4 of the smaller school districts. A tabulation is as follows:

Local School District	Population	Vote	Population-Variance Ratio
Ashley (Gratton #6 Fractional)	145	1	1391 to 1
Boyd (Alpine #10)	191	1	1056 to 1
Hoag (Solon #8)	111	1	1818 to 1
Nelson Center (Nelson #6)	99	1	2038 to 1
Grand Rapids (Grand Rapids #1)	201,777	1	1 to 1
Kent County Total	363,187		

[6] As phrased by District Judge Fox: "This is essentially a unit system of voting — each school district within the county receives one vote in the election of each of the five members of the County board." (p. 5a).

The 0-19 school census taken annually in each local school district illustrates the relative size population-wise of the 40 local school districts within Kent County in 1963 and the 39 local school districts in 1964:

	1963	1964
Algoma #1 fractional (Rockford)	4,625	4,637
Alpine #10	98	98
Byron #1 fractional	2,830	2,842
Caledonia	2,614	2,683
Courtland #1	158	163
Courtland #3	86	113
Courtland #5	105	115
Courtland #6 fractional	61	66
East Grand Rapids	5,300	5,439
Grand Rapids #1	75,863	76,395
Grand Rapids #15 fractional (Forest Hills)	4,514	4,759
Gratton #1 fractional	370	377
Gratton #5 fractional	178	194
Gratton #6 fractional	82	82
Lowell #1 fractional	3,049	3,216
Lowell #6	49	49
Nelson #3 fractional	106	93
Nelson #5 fractional	2,156	2,169
Nelson #6	55	58
Nelson #7 fractional	49	52
Paris #6 fractional (Godwin)	5,652	5,668
Paris #8	181	202
Paris #12 fractional (Kentwood)	6,760	7,216
Plainfield #9 fractional (Comstock Park)	2,607	2,806
Plainfield #16 fractional (Northview)	4,211	4,404
Solon #8	65	57
Sparta	3,685	3,765
Spencer #1 fractional	82	94
Spencer #2	31	32
Tyrone #4 fractional (Kent City)	1,610	1,592
Tyrone #8 fractional	258	231
Vergennes #1	35	31
Vergennes #4 fractional	92	88
Walker #1	34	35

	1963	1964
Walker #11	1,014	)
Walker #16 fractional	3,468	) 4,643
Wyoming #1 (Grandville)	5,856	6,080
Wyoming #7	2,961	2,890
Wyoming #8 fractional (Kelloggsville)	4,457	4,584
Wyoming #11 (Wyoming Public)	12,508	12,610
	157,915	160,638

The people in Grand Rapids constitute 55% of the population of the County but have only 1/40th or 2½% of the voting power in electing county school board members. A voter in Nelson Center has 2000 times the voting power of a voter in Grand Rapids. Based on the 0-19 school census (in 1963), 98% of the population of the County resided in the 19 larger school districts and the remaining 2% resided in the 21 smaller school districts and under the county-unit system referred to can control county school affairs. The correlation between school census figures (ages 0-19) and actual population while not 100%[7] is good enough for purposes of deciding the constitutional issues raised in this case since in any event the population variance ratios are to be considered on a basis of not 2-1 or 4-1, but 2000-1.

The result of this county-unit system is to permit the people in sparsely settled rural areas containing only 2% of the population of the county who have *demonstrated* a complete lack of concern for, sympathy with or understanding of the educational problems and challenges crying out for solution in the urban areas and who have maintained a county school district unresponsive to the needs and requirements of the overwhelming majority. This has

[7] 1960 population figures show that 55.6% of the County's population resided within the School District of the City of Grand Rapids while an extension of the 1963 0-19 school census count would indicate that the total had dropped to 48% by 1963. In Nelson Center actual count in 1963 indicated .027% of the County population resided within Nelson Center, whereas the 1963 0-19 school census would indicate a .035% figure. Boyd School District had an actual count of 191, or .058% of the County population; the 0-19 school census indicates a .062% figure. (See tables *supra* pp. 4-6).

resulted, in depleting and invading the interests of the plagued people in the core city in the following manner.

(a) Siphoning off tax monies from poverty stricken sections of the urban areas to wealthy rural districts;

(b) Shunting population including the school children therein from one school district to another, disrupting the educational process for the sole apparent reason of enriching the rural areas at the expense of the urban areas;

(c) Frustrating, comprehensive and coordinated plans for county-wide solutions to urban educational problems which cannot be restricted to artificial boundary lines.

The appellants, below, sought to enjoin the county-unit system and to require popular election of county school board members on a one person one vote basis. Appellants also vainly sought to enjoin and restrain local school district boundary changes then under consideration by the rural dominated county school board.

The district court by a 2-1 vote denied the appellants any of the relief sought. The whole panel agreed that this case presented the question of applicability of *Gray v. Sanders, supra,* to the local level of government. The majority opinion states:

"The facts and issues in connection with this case are very ably set forth in the opinion of Judge Fox. • • •

"The matter of malapportionment of boards and agencies of the states and their subsidiaries has not yet been before the United States Supreme Court. • • •

"• • •

"We recognize that the Supreme Court of the United States may at some time in the future reach the conclusion that the District Courts of the United States have the power and duty to precribe guide lines for the selection of the many boards and commis-

sions created and organized in connection with local government. We are satisfied that the Supreme Court of the United States has not yet reached that point. We are satisfied that we should not anticipate that the Supreme Court will reach that point." (Appendix A at pages 1a, 2a).

The Honorable Noel P. Fox, District Judge, in his thorough and penetrating dissenting opinion succinctly answered the primary question involved:

> "* * * Under the authority of Reynolds and other decisions of the United States Supreme Court herein discussed, I can see no warrant to arbitrarily cut off the citizens' right to fair representation at the county level." (Appendix B at page 18a).

Judge Fox also pointed out that this case did not involve the composition of appointive boards and commissions but rather that of a completely separate municipal corporation exercising important school functions and responsible to its constituents, not to the state legislature:

> "* * * This is not a situation in which the legislature has appointed a commission or board — no one is contending for a right to vote for appointed officials. The legislature has not chosen to appoint Boards for each of the Intermediate School Districts in the State of Michigan, in which case the function of providing for public education would be delegated, but not, legislatively speaking, the responsibility. For in that situation, the legislature would have delegated the function of providing for public education, but the appointees would have been directly responsible to the legislature, an equally apportioned body directly responsible to the people.
>
> "But here the legislature has delegated not only the function, but also the responsibility, which would not be objectionable but for the gross malapportionment in the existing system of selecting the Board. * * *" (Appendix B, at page 18a-19a).

THE FEDERAL QUESTION IS SUBSTANTIAL

We contend that democracy at the local level of government is just as important as it is in the state house (*Baker v. Carr, supra, Reynolds v. Sims, supra*); and just as important as it is in election of statewide officeholders (*Gray v. Sanders, supra*): and that "today education is perhaps one of the most important functions of state local governments" (*Brown v. Board of Education*, 347 U.S. 483, p. 493); and that there can be little question but that this case is not only important to these litigants but to the workings of democracy at the local level and to educational systems nationwide.[8]

Since the landmark decision of *Baker v. Carr, supra*, the present case is only the second one involving malapportionment at the local level of government to reach the Supreme Court. The first was *Bianchi v. Griffing*, 238 F. Supp. 997, involving a county board of supervisors in the State of New York, where Supreme Court review was refused on procedural grounds.[9] In spite of the absence of appellate review by this court, the federal and state courts have been busily considering and deciding malapportionment issues at the local level. Almost all apply *Baker, Gray*

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[8] Not only is education one of the most important functions of state and local governments, but numerically speaking the school board is the most common form of governmental unit in the United States. See *U.S. Advisory Commission on Inter-Governmental Relations, Performance of Urban Functions; Local and Area Wide* 78 (1963). In 1962 there were over 34,000 of these autonomous bodies, most of them popularly elected. (See U.S. Department of Commerce Bureau of the Census, 1965 Statistical Abstract of the United States 419.) See Note, 79 Harv. Law Rev. 1228 (1966) at 1275 where the author observes: "The electoral districts from which these (school) boards are chosen are often drawn to coincide with school attendance districts, so that the electoral districts often have neither equal numbers of inhabitants nor equal numbers of children. Probably no public issue arouses the interest of more municipal citizens than public education; heated battles over taxation and bond issues, consolidation of school districts, quality of education, and segregation indicate that any major shift in local school board policy will be opposed and defended vigorously."

[9] The trial court in the *Bianchi* case entered an interlocutory order requiring the county board of supervisors to submit a reapportionment plan and retaining jurisdiction. Plaintiff-Appellee moved to dismiss the appeal on the grounds that it was an attempt to appeal a non-reviewable order. In 382 U.S. 15 this Court held: "The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction.", apparently agreeing with the appellee that the interlocutory order was not a final order which could be appealed.

and Reynolds, to local government.[10] The Michigan Supreme Court was deadlocked in two cases (a 4 to 4 vote)[11] solely because of the desire of Justice Eugene F. Black of the Michigan Supreme Court to refrain from outrunning the Supreme Court of the United States. In the *Muskegon* case, Justice Black's views vividly illustrate the need for review and decision by the Supreme Court of the United States: (377 Mich. pp. 668-671).

"To employ an apt expression of Justice ADAMS, our immediate question is whether this Court of a State is going 'to attempt to outrun the Supreme Court of the United States.' * * * Now if this Supreme Court did have the final word for the present case, which of course it does not, I would join those who say that the 'one-man one-vote' principle of the *Reynolds* through *Lucas Cases* * * * applies to and controls the organization of county government in Michigan. Having reread Judge Searl's opinion of the companion case (considered *post*), I lean indeed to belief that the United States Supreme Court will — in the ultimate — apply Fourteenth Amendment equality per

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[10] *Ellis v. Mayor and City Council of Baltimore*, 234 F. Supp. 945 (D.C. Md. 1964) affirmed, 352 F2d 123 (4th Cir. 1965) (City Council); *Mauk v. Hoffman*, 87 N.J. Super. 276, 209 A2d 150 (Super. Ct. of N.J., Ch. Div. 1965) (County Board of Freeholders); *Bianchi v. Griffing*, 217 F. Supp. 166, 238 F. Supp. 997 (D.C.E.D.N.Y. 1965), appeal dismissed, 382 U.S. 15 (1965) (County Board of Supervisors) *Goldstein v. Rockefeller*, 45 Misc. 2d 778, 257 N.Y.S. 2d 994 (Sup. Ct. 1965) (County Board of Supervisors); *Augustini v. Lasky*, 46 Misc. 2d 1058, 262 N.Y.S. 2d 594 (Sup. Ct. 1965) (County Board of Supervisors); *Shilbury v. Board of Supervisors*, 46 Misc. 2d 857, 260 N.Y.S. 2d 931 (Sup. Ct. 1965) (County Board of Supervisors); *Seaman v. Fedourich*, 262 N.Y.S. 2d 444, 16 N.Y. 2d 94 (Ct. of App. 1965) (Common Council); *Town of Greenburgh v. Board of Supervisors*, 49 Misc. 2d 116, 266 N.Y.S. 2d 998 (Sup. Ct. 1966) (County Board of Supervisors); Opinion of the Justices, 106 N.H. 233, 209 A2d 471 (1965) (Applying state legislation toward boundaries) *State ex rel Sennesbern v. Sylvester*, 26 Wis. 2d 43, 132 N.W. 2d 249 (1965) (County Board of Supervisors); *Dolecier v. Tyrone Area School Board*, 267 F. Supp. 30 (D.C.W.D. Pa. 1965) (School Board); *Simmon v. Lafayette Parish*, 226 F. Supp. 301 (D.C.W.D. La. 1964) (Police Jury-Parrish governing authority) (Defendant's motion to dismiss, denied); *Damon v. Lauderdale County Election Comm'rs.* Civil No. 1197-E, (D.C.S.D. Miss. 1964) (Informal opinion) reprinted in *National Municipal League, Court Decisions on Legislative Reapportionment*, Vol. 12, p. 139 (1965) (County Board of Supervisors); *Miller v. Board of Supervisors*, 405 P2d 857, 46 Cal. Rptr 617 (1965) (County Board of Supervisors applying state statute requiring equal population districting).

[11] *Muskegon Prosecuting Attorney v. Klevering*, 377 Mich. 666 (1966); *Brouwer v. Kent County Clerk*, 377 Mich. 616 (1966).

the cited cases to the elective organization of local government. * * *

"* * *

"* * * Seated as we are as a subordinate court confronted by an undecided Federal question of nationally controlling eminence, I would pause upon that ground until a specifically corresponding issue comes to reliable disposition in the Federal system proper. * * *"

Other than the present case, and the two Michigan cases, just mentioned, the only case refused to apply *Baker, et al.*, at the local level of government is *Johnson v. Genesee County*, 232 F. Supp. 567 (E.D. Mich. 1964.)[12]

It is apparent from this volume of litigation that reapportionment is on the march at the local level of government as well as at the state house level, but there is a great need for an authoritative decision and guidance from this Court.[13] This conflict in authority and the deadlock in the Michigan Court needs desperately to be resolved.

While it may have unique features, the county-unit system for electing county school board members in Michigan is essentially the same as the system condemned in *Gray*

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[12] The decision in *Johnson* is questionable because the District Judge was of the opinion that he was bound by the decision of the Supreme Court in *Tedesco v. Board of Supervisors of Elections*, 339 U.S. 940. Reliance on *Tedesco* would seem misplaced because there the plaintiffs sought to correct malapportionment of the city commission based upon the privileges and immunities clause of the 14th Amendment rather than the equal protection clause and because in *Tedesco* the appeal was dismissed in a memorandum opinion for want of a substantial federal question, 339 U.S. 940, 7 days after the Supreme Court handed down the *South v. Peters*, 339 U.S. 959, decision which reiterated previous decisions that apportionment matters were not justiciable. Obviously, *Tedesco* followed *South v. Peters*, and the reversal of *South v. Peters* in *Baker v. Carr*, and *Gray v. Sanders* would have the same effect on *Tedesco*. Not included in this count is *Port Jefferson v. Board of Supervisors*, 256 N.Y.S. 2d 34 (Sup. Ct. 1964) where the trial court refused to order reapportionment "in view of the lack of appellate court precedent in New York State." In view of the appellate court decisions in the New York State courts and the *Bianchi* case all since 1964 the reason for such hesitancy is gone.

[13] Besides the deadlock in the Michigan Supreme Court, the State Legislature has just passed and the Governor has signed, a county home rule bill which provides for equally apportioned districts for county supervisors, disregarding the constitutional guarantee of one supervisor for each township contained in the Michigan Constitution of 1963. (Act 112 of the Public Acts of Michigan, 1966). Judicial review of this legislation is inevitable and in view of the deadlock in the Michigan Supreme Court only this Court can resolve the matter with finality.

v. Sanders, supra.[14] As in *Gray* there is here an indirect debasing or diluting of a citizen's vote; where one person's vote counts for more than another's depending upon his place of residence. The common denominator in *Baker, Reynolds, Gray* and the case at bar is that in each instance there is a lack of equal representation for equal numbers of people. The clear lesson of these cases is that an indirect debasing or diluting of a citizen's vote whether the scheme is simple or sophisticated is *now* condemned the same as it is when done directly by ballot-box stuffing (*Ex parte Siebold*, 100 U.S. 371); vote fraud (*United States v. Mosely*, 238 U.S. 383); or by a complete denial of the right to vote (*Nixon v. Herndon*, 273 U.S. 536). As Chief Justice Warren said in Reynolds:

> "* * * (T)he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." (377 U.S. p 555).

Justice Douglas' holding in *Gray* is equally pertinent:

> "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote — whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home be in that geographical unit. This is required by the equal protection clause of the Fourteenth Amendment." (372 U.S. p. 379).

And as Chief Justice Warren summarized in *Reynolds*:

> "* * * (T)he fundamental principal of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State. * * *" (377 U.S. p. 560-561).

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[14] Judge Fox states that the "local boards elect intermediate county boards of education in accordance with a system paralleling the county-unit system invalidated by the Supreme Court in *Gray v. Sanders*."

It hardly needs to be added that these rights so eloquently phrased in *Gray* and *Reynolds* protect individuals at every level of government. *Standard Computing Scale Co. v. Farrell*, 249 U.S. 571, p. 577; *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, p. 68; *Kick Wo. v. Hopkins*, 118 U.S. 356, p. 374.

The evil that might emanate from an improperly apportioned Tennessee (*Baker v. Carr, supra*) or Alabama (*Reynolds v. Sims, supra*) legislature, or that could result from an improperly balanced primary election system in Georgia (*Gray v. Sanders, supra*) is no greater than that which befalls the people of the School District of the City of Grand Rapids with a total population of 201,777 in a County of 363,187. Facing as it does the great and complex problems of urban upheavals and frustrations, the people of Grand Rapids bring to the bienniel election of the County School Board their *one* vote which is equated to that of Nelson Center's *one* vote with a population of 99. Then, during the year they bring their educational problems fully as serious as considered by this Court in *Brown v. Board of Education*, (*supra*, at p. 493), only to be rejected by the "majority" of the board which is controlled by 2 per cent of the population. Certainly an imbalance of such magnitude in considering matters of such importance warrants protection by this Court. Metropolitan problems cannot be solved unless they are recognized as metropolitan problems. The core city contains the smoldering resentments, frustrations, miseries and the opportunities that must be shared and solved by everyone. People of all areas must meet upon equal footing and solve their common problems sensibly and forthrightly. The alternative is a compounding of hatreds, riots and chaos.

Without equal representation for the people in the urban areas adequate recognition, consideration and solution of their problems is impossible.

CONCLUSION

We respectfully and urgently urge this Court to accept appeal herein for plenary review and to reverse decision below.

Such action is essential to the nation as a whole.

Respectfully submitted,

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Dated: August 2, 1966.

APPENDIX A

(Filed May 2, 1966)

United States of America
In the United States District Court for the Western District of Michigan, Southern Division

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JAMES SAILORS, et al.,
Plaintiffs,

vs. Civil Action No. 4480

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, et al.,
Defendants.

BEFORE: O'SULLIVAN, Circuit Judge, KENT, Chief Judge, and FOX, District Judge.

KENT, Chief Judge with whom O'SULLIVAN Circuit Judge, concurs.

The facts and issues in connection with this case are very ably set forth in the opinion of Judge Fox. We find ourselves in a position where we concur with Judge Fox, writing for the Court, in reaching the conclusion that this Court will not overturn the acts of the de facto Kent Intermediate Board. We cannot concur in the conclusion wherein the statute creating such Intermediate Board of Education, M.S.A. 15.3294(1) et seq., is declared to be unconstitutional as in violation of the equal protection clause of the Fourteenth Amendment. Because of our holding this Court does not retain jurisdiction of the action.

The matter of malapportionment of boards and agencies of the states and their subsidiaries has not yet been before the United States Supreme Court. We recognize the impact of the cases to which reference is made in Judge Fox's opinion, but do not agree that the decisions to which reference is therein made require the District Courts of the United States to review the manner of apportionment and constitution of each and every board and agency of the several states, cities, villages, counties, parishes, townships,

metropolitan districts, and all other such policy and decision making bodies which are in existence for the purpose of carrying out the intent of the legislatures which authorize their creation.

Reynolds v. Simms, 377 U.S. 533, 84 S.C. 1362, 12 L. Ed. 2d 506, is unquestionably authority for the "one man one vote" premise to be used in the apportionment of state legislatures. Citations of authority have been given in Judge Fox's opinion which he concludes would authorize the imposition of this same premise upon every agency of every body of government in existence in this country today. With this we are not in accord.

We prefer the result reached in *Johnson v. Genesee County, Michigan*, 232 F. Supp. 567, (E.D. Mich. 1964), wherein Judge Stephen Roth states at page 572: "Under the prevailing view of the United States Supreme Court, as we have pointed out above, the composition of local units of government is held to be a state matter. Under the rule of stare decisis, this Court is not free to consider the subject of the apportionment of representation on local legislative bodies. It may well be that the time will come when the application of the Fourteenth Amendment will be extended that far. The more likely development is that the June 15, 1964, rulings of the Supreme Court in cases dealing with the state legislatures of Alabama, New York, Maryland, Delaware, Virginia, and Colorado will result in legislatures in our states which will be proportionately representative of people, and therefore, likely to themselves establish in local legislative bodies a vastly different balance between people and governmental power."

We recognize that the Supreme Court of the United States may at some time in the future reach the conclusion that the District Courts of the United States have the power and duty to prescribe guide lines for the selection of the many boards and commissions created and organized in connection with local government. We are satisfied that the Supreme Court of the United States has not yet reached that point. We are satisfied that we should not anticipate that the Supreme Court will reach that point.

For the reasons herein stated an order may be entered dismissing the complaint.

APPENDIX B

United States of America
In the District Court of the United States for the Western District of Michigan, Southern Division

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JAMES SAILORS and LORETTA SAILORS;
SEYMOUR KONING and MILDRED KONING;
GRAZZI MULLAY and ROSALIE MULLAY;
and THE BOARD OF EDUCATION OF THE CITY OF GRAND RAPIDS, a second class school district,
Plaintiffs,

WILLIAM A. DUTHLER and ANNA M. DUTHLER;
HARVEY A. DUTHLER and EDNA M. DUTHLER;
and THE CITY OF GRAND RAPIDS, a municipal corporation,
Intervening Plaintiffs,

vs.

Civil Action No. 4480

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, and VICTOR WELLER, DEWEY JAARSMA, MARY I. KEELER, RUSSELL EMMONS, and C. B. LEAVER, as members thereof, and THE KENTWOOD PUBLIC SCHOOLS, a school district of the fourth class,
Defendants,

ATTORNEY GENERAL OF THE STATE OF MICHIGAN,
Intervening Defendant.

Before O'SULLIVAN, Circuit Judge, KENT, Chief District Judge, and FOX, District Judge.

FOX, District Judge.

Decided May 2, 1966

This is an action brought by plaintiffs Sailors, Koning, and Mullay, and intervening plaintiffs Duthler, all formerly school electors of defendant Kentwood Public Schools, against the Board of Education of the County of Kent (hereinafter called "Board"), and Kentwood Public Schools, a local school district. Suit was commenced on February 15, 1963.

As additional parties plaintiff in this case, there appear the City of Grand Rapids, and the Board of Education of the City of Grand Rapids, a second-class school district.

By popular vote of February 1962, three areas of Paris Township (Breton Avenue, Kendall, and Fuller-44th Street) were annexed to the City of Grand Rapids. Concomitantly, these areas were detached from defendant Kentwood school district and annexed to the plaintiff City of Grand Rapids school district. The annexation became effective on December 31, 1962.

A fourth area (Alger Street) was detached and annexed by vote of the legislative bodies of the township and city, and that territory likewise shifted school districts.

On January 1, 1963, the Board of Education of the defendant Kentwood Public Schools requested defendant Board to detach these four areas from plaintiff school district and transfer them to defendant Kentwood Public Schools.

Defendant Board accepted the transfer petitions, gave the statutory notice of its meeting, and on February 25, 1963, granted the transfer request without written opinion.

Plaintiffs appealed the decision to the State Board of Education, which entered an amended order on June 5, 1963, exempting the property of the original plaintiffs from the transfer, as well as that of two other lot owners. Again, no written opinion was given.

By way of relief, plaintiffs seek to have this court set aside the transfers subsequent to the effective date of annexation, to declare that the defendant Board is unconstitutionally constituted, to enjoin any further elections until the misrepresentation is brought into balance, and to declare that the absence of any statutory standards governing the decisions of the county board of education is violative of the Fourteenth Amendment due process guar-

antees, and constitutes an improper delegation of legislative authority.

Defendants contend that the court has no jurisdiction over the subject matter of the complaint, and that it has no power to set aside the acts of an allegedly malapportioned legislature.

Members of the county boards of education are elected in accordance with the procedure set forth in Michigan Statutes Annotated 15.3291 and ff. This is essentially a unit system of voting — each school district within the county receives one vote in the election of each of the five members of the county board.

By amendments to the law effective March 28, 1963 (M. S.A. 15.3294(1), and ff.), provision for popular election of county board members is available upon request of a majority of the local school boards, representing more than 50% of the children on the last school census.

These elections are held biennially on the first Monday of June, to select replacements for members whose terms have expired. Under the applicable provision, not more than two members of the board may come from any one school district.

The county board of education exercises legislative, administrative, and quasi-judicial functions. Among these are the levying of *ad valorem* property taxes; collecting data on delinquent taxes; arranging for the taking of the school census; preparation of an annual budget; authority over special education programs and programs for the retarded; and authority to transfer territory from one school district to another.

In the present case, wide variation in the populations of the constituent school districts is prevalent. Nelson School District has a population of 99, and exercises one unit vote. Hoag School District has a population of 111, and one unit vote; Dodge School District, population 117 and one unit vote; Ashley School District, population 145 and one unit vote; Grand Rapids School District, population 201,777, or 55.6% of all people in Kent County, and one unit vote. (According to the 1960 decennial census.) In 1964 there were 39 school districts within Kent County. Thus in several school districts in Kent County, the vot-

ing strength of one voter approximates the voting strength of 200 voters in the Grand Rapids School District.

Furthermore, plaintiff Grand Rapids School District has 48.04% of the total number of school-age children in Kent County (1963 school census).

Similar inequality is found in the property valuation figures for the respective school districts.

The primary question is whether or not the guarantees of the equal protection clause of the Fourteenth Amendment to the Federal Constitution are extended to electors of local school boards in the State of Michigan, which local boards elect intermediate (county) boards of education in accordance with a system paralelling the "county-unit" system invalidated by the Supreme Court in Gray v. Sanders, 372 U.S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821 (1963).

At oral argument learned counsel for defendant Kentwood School District pressed on the court the admonition not to enter the "political thicket." This phrase was coined by Mr. Justice Frankfurter in his opinion in the case of Colegrove v. Green, 328 U.S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946), which sought to invalidate a scheme of state congressional districts for the reason that they differed greatly in population.

> "To sustain this action would cut very deep into the very being of Congress. *Courts ought not to enter this political thicket.* The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress. The Constitution has many commands that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action." (Emphasis supplied.) Id. at 556.

Mr. Justice Frankfurter's opinion in that case represented the views of three members of the court. Mr. Justice Rutledge joined in the result, giving a majority, expressing the view that the question was judicially cogniz-

able, but that the particular case did not call for an exercise of the Court's jurisdiction.

In the decision in Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962), the majority held that lower federal courts have jurisdiction of the subject matter of a suit attacking a state apportionment act as unconstitutional on the grounds that it deprives the plaintiff of equal protection of the laws by debasing his vote, that a state apportionment statute violates the equal protection clause by effecting a gross disproportion in representation of the voting population, and that a person qualified to vote for members of a state legislature has standing to challenge a state legislative apportionment statute as violative of the Fourteenth Amendment equal protection clause.

Justices Frankfurter and Harlan dissented on the grounds of non-justiciability.

In the spate of cases subsequently decided by the Supreme Court upholding the right to challenge malapportionment of state legislatures, the lone dissenter from that proposition has been Mr. Justice Harlan.

In Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964), Mr. Chief Justice Warren, in the opinion of the court, stated:

> *"We are cautioned about the dangers of entering into this political thicket and mathematical quagmires. Our answer is this: 'A denial of constitutionally protected rights demands judicial protection; our oaths and our office require no less of us.'* As stated in Gomillion v. Lightfoot, supra [364 U.S. 339, 5 L. Ed. 2d 110, 81 S. Ct. 125], 'When a state exercises power wholly within the domain of state interest, it is insulated from judicial review. *But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.'*
>
> "To the extent that a citizen's right to vote is debased, he is that much less a citizen. • • • But the basic principle of representative government remains, and must remain, unchanged — the weight of a citi-

zen's vote cannot be made to depend upon where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies. A citizen, a qualified voter, is no more nor less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government of laws and not men. This is at the heart of Lincoln's vision of 'government of the people, by the people, [and] for the people'." (Emphasis supplied.) Id. at 377 U.S. 566-7.

The clear import of this language and of all the decisions handed down since that in Baker v. Carr, supra, is that the "political thicket" has been entered, courts will entertain actions of this nature, and relief will be granted in the proper case. Under the well established doctrine of *stare decisis*, then, the argument of counsel that this court ought not involve itself in a controversy of this sort is palpably untenable.

As to the standards to be applied, Mr. Chief Justice Warren, again in Reynolds v. Sims, supra, made the following observations:

> "We indicated in Baker, however, that the Equal Protection Clause provides discoverable and manageable standards for use by lower courts in determining the constitutionality of a state legislative apportionment scheme, and we stated:
>
> 'Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action.'" (Footnote omitted.) Id. at 377 U.S.557.

(Discussing Gray v. Sanders, supra):

"Continuing, we stated that 'there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the state.' And finally, we concluded: 'The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments, can mean only one thing — one person, one vote.'" (Footnote omitted.) Id. at 377 U.S. 558.

The power of the court to act in this situation is thus clear — the question remains as to whether it should forbear from acting, and this requires a scrutiny of the facts in light of the Supreme Court cases.

Initially, there can be no question, from the most cursory glance at the facts of this case, that there is a gross disparity, amounting to invidious discrimination, between the representation afforded the Grand Rapids School District on the Kent Intermediate Board of Education and the representation of other constituent school districts on the Board. In the use of the term "invidious," I in no way convey any connotation of bad faith. For a legislature, acting with the best of intentions in passing legislation of the type here concerned, may inadvertently provide the means by which "sophisticated discrimination" may result from the execution of the statute's provisions.(1)

We must now inquire as to whether or not this court should refrain from acting because the controversy before it concerns government on the county level, while the decided Supreme Court cases have thus far applied the guarantees of the equal protection clause of the Fourteenth Amendment only to voters' rights on the state level.

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(1) See WMCA v. Lomenzo, 377 U.S. 633, 653, 84 S. Ct. 1418, 12 L. Ed. 2d 568, 580 (1964).

"Political subdivisions of States — counties, cities, or whatever — never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in Hunter v. City of Pittsburgh, 207 US 161, 178, 52 L ed 151, 159, 28 S Ct 40, these governmental units are 'created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them,' and the 'number, nature and duration of the powers conferred upon [them] . . . and the territory over which they shall be exercised rests in the absolute discretion of the State.' " Reynolds v. Sims, supra, at 377 U.S. 575.

In City of Muskegon v. County of Muskegon, File No. 15983, Muskegon Circuit Court, the court said:

"The County, on the other hand is a political subdivision of the state. It is superimposed by a sovereign and paramount authority, as a governmental agent of the State, to perform primarily the functions of the State locally and within its boundaries. It is a 'body politic and corporate'. It is created as an arm of the sovereign government of the State for purposes essential to the proper functioning of that government in matters which relate to the civil administration, finances, maintenance of the peace, public welfare, and especially for the administration of justice through the maintenance of courts of original trial jurisdiction, such as the Circuit Court. This latter function, of course, includes the establishment of jails for the confinement and punishment of those who have been guilty of offenses against the criminal laws of the State of Michigan.

"The County is generally a subordinate part of the sovereignty of the State itself. 20 C.J.S. 753, Section 1; 14 Am. Jur. 186, Sec. 4. There is a logical basis for drawing distinction between Counties and ordinary municipal corporations, Cities. Counties are

created by the State in the exercise of its own sovereign power without the particular solicitation, consent, or concurrence of the people who inhabit them. In Michigan, the Counties owe their creation to the constitution and statutes which confer upon them all the powers they possess, prescribe their duties and impose the liabilities to which they are subject. With scarcely an exception, all the powers and the functions of the County organization have a direct and exclusive reference to the general policies of the State of Michigan, and, in fact, counties are only a branch of the general administration of that policy.

"On the other hand, municipal corporations, such as chartered cities, are more amply endowed with corporate life and function. They exist under general or special charters conferred at the direct solicitation or by the free consent of the people who compose them. They are created chiefly for the interest, advantage and convenience of their inhabitants. The distinction between a municipal corporation and a political subdivision of the state, such as a County, relates both to the purposes for which they are created and the method of their creation.

"Thus, the organization of the City is asked for, or at least, consented to by the people it embraces. A County is imposed by a sovereign and paramount authority, it is created by the sovereign power of the State, of its sovereign will, without the particular solicitation, consent or concurrent action of the people who inhabit them. Bar v. Schintz, 194 Wis. 397, 216 N.W. 509; McQuillan on Municipal Corporations, Section 12, Vol. 1; Young vs. Juno County, 192 Wis. 646, 212 N.W. 295; Miller vs. Manistee Board of Road Commissioners, 297 Mich. 487; City of Detroit vs. O'Connor, 302 Mich. 531; Crowley vs. Clark County, 261 N.W. 221; Campbell vs. Board of Commissioners, 30 F. 2d 910; County of Door vs. A. F. of L., et al. 4 Wis. 2nd, 142, 89 N.W. 2d 920 (1958); Green County vs. City of Monroe, supra."

Obviously, therefore, the Kent Intermediate Board of Education is an arm of the State, albeit acting on a local level.

The Supreme Court has made crystal clear, in sweeping language, the right which is involved in these cases. Beginning with Gray v. Sanders, supra, which dealt with statewide primaries for United States Senator and state officers, Mr. Justice Douglas stated the majority view to be:

> "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote — whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment." Id. at 372 U.S. 379.

This view continues through Wesberry v. Sanders, 376 U.S. 1, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964), involving congressional elections, in which Mr. Justice Black stated that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." (Id. at 376 U.S. 8), and culminates with Reynolds v. Sims, supra, in which it was held that both houses of state legislatures must be apportioned on a population basis, Mr. Chief Justice Warren commenting that "the fundamental principle of representative government in this county is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a state." (Id. at 377 U.S. 560-1).

Thus, it is beyond objection that it is the right to vote on an equal basis, whether under Article I, §2, of the Federal Constitution, or the Equal Protection Clause of the Fourteenth Amendment, which is guaranteed in these cases.

Nakedly implicit in this proposition is that equal voting rights carry a right to fair representation of the voting public by the elected official.

> "But representative government is in essence self-government through the medium of elected representa-

tives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less." Reynolds v. Sims, supra, at 377 U.S. 565.

Numerous courts have passed favorably on the proposition that the effect of these decisions does reach the statewide level. See Ellis v. Mayor and City Council, 352 F. 2d 123 (CCA, 4, 1965); Bianchi v. Griffing, 238 F. Supp. 997 (D.C. E.D. N.Y., 1965); Damon v. Lauderdale County Election Commissioners, C.A. 1197-E (D.C. S.D. Miss., October 21, 1964); State v. Sylvester, 26 Wis. 2d 43, 132 N.W. 2d 249 (1965); and Brouwer v. Bronkema, Case No. 1855 (Kent County, Michigan, Circuit Court, September 11, 1964).(2) I am convinced that the facts of this case admit of no other course than to reach a similar decision.

In the Bianchi case, supra, the order of the three-judge court retaining jurisdiction pending political action in reapportioning a county board of supervisors, denying a requested injunction and defendants' motion to dismiss, was appealed to the United States Supreme Court by the defendants. Plaintiff-appellee moved to dismiss the appeal on the grounds that it was an attempt to appeal a non-reviewable order.

Although defendant-appellants' brief (p. 8) raised the "vitally important question of whether the Equal Protection Clause of the Fourteenth Amendment in respect

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(2) The Brouwer case was the first case decided after Reynolds v. Sims, supra, which applied its rule on the county level. Judge Fred N. Searl's cogent opinion in that case has drawn the well deserved attention of the courts above and is certain to figure prominently in the work of textwriters. See, for example, Weinstein, The Effect of Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government, 65 Col. L.R. 21, note 2.

to reapportionment extends to the lowest level of local government," the Supreme Court in a one-line opinion stated: "The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction." 382 U.S. 15, 86 S. Ct. 52, 15 L. Ed. 2d 11 (1965).

Although the Supreme Court was squarely faced with the issue of whether or not the trial court had jurisdiction in cases involving equality of voting rights for election of officials in county and local units of government, it chose to decide the Bianchi case on the narrow ground of lack of jurisdiction under 28 USC §1253 (because the order appealed from was not, in the Court's view, a final order), thus leaving the case in precisely the same status as my decision in the instant case.

The Kent Intermediate Board of Education, as do all such Boards in the State of Michigan, exercises powers of a legislative, as well as administrative and quasi-judicial, character. When questioned as to the nature of the Intermediate Boards of Education, specifically, whether or not they were representative bodies, the Assistant Attorney General averred that he did not think so, in the accepted sense of the term. He also contended that plaintiffs here had no judicially cognizable right in the territory of the school district, and therefore were without standing to prosecute this action.

As pointed out above, the right involved is the right to vote for a representative body, and it cannot be seriously contended that the Kent Intermediate Board of Education, and its kin across the State, are not representative bodies.

Most apparent is the fact that they are originally organized on a county basis. As such, they dictate, direct and supervise general operations of schools within the county. Obviously they would not be established on a county, or any other geographical basis, unless intended to represent that particular area.

Of significance also is the following quotation from the case of School District of the City of Lansing v. State Board of Education, 367 Mich. 591, 116 N.W. 2d 866, 868:

> "Unlike the delegation of other powers by the legislature to local governments, education is not inherently

a part of the local self-government of a municipality except insofar as the legislature may choose to make it such. Control of our public school system is a State matter delegated and lodged in the State legislature by the Constitution. The policy of the State has been to retain control of its school system, to be administered throughout the State agencies organized with plenary powers to carry out the delegated functions given it by the legislature."

An analysis of this state of affairs leads to the unalterable conclusion stated above. In these days of growing national concern over the status of education in this country, it need hardly be stated that education is a matter of intense importance to the population.

In Michigan, this public school system is "delegated and lodged in the State legislature by the Constitution." The Michigan legislature, in accordance with the apportionment decisions of the United States Supreme Court, has redistricted itself and acts as an apportioned body. This legislature has also undertaken hearings on the problem of establishing county boards of supervisors on a representative basis, thus showing its responsiveness to recent court decisions.

Thus, under the Michigan Constitution, Article VIII, Section 2, education of the children of the citizens of this State is to be provided for by the state legislature, an apportioned body, fairly representative of the people of the State.

The legislature, through the statute challenged here, has delegated its functions in this area to a local state agency, to be carried out by that agency. The method by which this is done has already been explained, and results in the virtual muting of the voices of 55.6% of the people in Kent County in the area of public education.

Thus, to permit this system to stand would be to allow the legislature to completely nullify the result of Reynolds v. Sims, supra, by simply delegating powers under the same sort of scheme as now exists for the election of members of the Kent Intermediate Board of Education. For even though members of local school districts are

elected by popular election, the election of the five members of the Intermediate Board is by majority vote of the constituent school districts in the county, regardless of the respective populations of the several school districts.

The Supreme Court has spoken clearly on this point:

> "However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant undervaluation of the weight of the votes of certain of a State's citizens merely because of where they happen to reside." WMCA v. Lomenzo, 377 U.S. 633, 653, 84 S.Ct. 1418, 12 L. Ed. 2d 568, at 580.

And again, in Reynolds v. Sims, supra, the Court said:

> "And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable. * * * The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State Two, five, or 10 of them must vote before the effect of their voting is equivalent to that of their favored neighbor. Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems

justifiable. One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination.' Lane v. Wilson, 307 US 268, 83 L ed 1281, 1287, 59 S Ct 872; Gomillion v. Lightfoot, 364 US 339, 342, 5 L ed 110, 113, 81 S Ct 125. As we stated in Wesberry v. Sanders, supra:

> 'We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would . . . run counter to our fundamental ideas of democratic government.' " Id. at 377 U.S. 562-3.

To say that a citizen, guaranteed by his state constitution that the public education of his children shall be provided for by the state legislature, an apportioned body directly responsible to him, can be denied this fair representation by the action of that legislature in delegating this function to a statutorily created agency of the state which is not responsive to the population on an equal representation basis, is to be completely out of spirit with the announced decisions of the United States Supreme Court, and allows a limitless circumvention of the rule posited by that Court in Reynolds v. Sims, supra.

True it may be that a Michigan citizen has no inherent right to vote for matters concerning education. Suffice it to say that the Michigan Constitution provides that such a person will be fairly represented in such matters.

However, in the instant case the legislature has chosen to give citizens of Michigan such a right, and the argument that since such a right is a matter of grace with the legislature it can be rendered inconsequential by the bestowing hand is sophistry of the highest order.

More importantly, as noted in Reynolds v. Sims, supra, the right to vote is personal. Once it is conferred by the state, "all who participate in the election are to have an equal vote." Gray v. Sanders, supra, at 372 U.S. 379.

Although the manner in which a state distributes power

among its governmental organs is commonly a question for the state itself, Highland Farms Dairy, Inc. v. Agnew, 300 U.S. 608, 612, 57 S.Ct. 549, 81 L. Ed. 835, 840 (1937), the state in distributing such power shall not use it "as an instrument for circumventing a federally protected right." Gomillion v. Lightfoot, 364 U.S. 339, at 347, 81 S.Ct. 125, 5 L. Ed. 2d 110, at 117 (1960).

In point of fact a Michigan citizen can vote for the person responsible for providing for his child's education — his elected representative in the legislature, and Reynolds v. Sims, supra, guarantees him that his vote will be counted equally, or nearly so, with that of every other vote. Under the arrangement now countenanced by M.S.A. 15.3294(1) and ff., the value of that vote on educational matters is greatly weakened. Thus, we see the voting power of some qualified voters grossly dilated, while that of others is grossly diluted. This is a classic situation of sophisticated invidious discrimination, and the statute to this extent must be declared unconstitutional.

We are not here concerned with the nature or structure of governmental units as such. The relevance of "one man, one vote" to the present case is not an extension of the rule laid down by Reynolds v. Sims, supra, but, rather it is a precise application of Reynolds to its intended purpose — to secure a constitutionally protected right to individual citizens. Under the authority of Reynolds and other decisions of the United States Supreme Court herein discussed, I can see no warrant to arbitrarily cut off the citizens' right to fair representation at the county level.

Since the majority opinion differs substantially as to the consequences of my conclusion, it may be well at this point to indicate exactly what is and what is not involved here. This is not a situation in which the legislature has appointed a commission or board — no one is contending for a right to vote for appointed officials. The legislature has not chosen to appoint Boards for each of the Intermediate School Districts in the State of Michigan, in which case the function of providing for public education would be delegated, but not, legislatively speaking, the responsibility. For in that situation, the legislature would have delegated the function of providing for public education,

but the appointees would have been directly responsible to the legislature, an equally apportioned body directly responsible to the people.

But here the legislature has delegated not only the function, but also the responsibility, which would not be objectionable but for the gross malapportionment in the existing system of selecting the Board. For under that system the members of the Board are not directly responsible to the legislature, but to the people by reason of the vote which the legislature has given them through M.S.A. 15.3294(1) and ff. Since the vote is not given on a fairly apportioned basis, the responsibility is fractionalized, and the Board is, in effect, more responsible to the minority than to the majority.(3)

The Assistant Attorney General has argued that the statute itself provides for popular election of board members (M.S.A. 15.3294 (2) and (3)), and that certain reorganized districts have popularly elected Boards, as provided in M.S.A. 15.3302(1).

The procedure outlined in M.S.A. 15.3294(2) and (3) is constitutionally unacceptable, requiring as it does that a majority of constituent school districts, representing more than 50% of the children on the last school census in the county district, must adopt resolutions in favor of such a procedure. The problem with this plan is that the Grand Rapids School District, with 48.04% of the school-age children in the Kent Intermediate School District, and 55.6% of the total population, would need the votes of nineteen other school districts (there being a total of 39 in Kent County) to bring about a popular election. Thus again, patently, a small minority has effective power to frustrate the will of the great majority.

As to those intermediate school districts now functioning under popularly elected Boards, as provided by M.S.A. 15.3302(1), no problem is envisioned, since that statute is not attacked and a Board which is fairly representative would not be subject to attack.

---

(3) For one writer's view of the status of county government after the recent Supreme Court decisions, see Weinstein, supra. Note 1. Professor Weinstein seems to be of the opinion that, although a person does not necessarily have a right to participate in the control of every state agency, when a state agency is controlled by voters, all voters must be treated as equally as possible. Id. at 33.

Following the well established principle that the acts of a *de facto* body have full legal effect, the court is not disposed to grant plaintiffs this facet of the relief they seek. The possible harm in setting a precedent of this sort, even on the facts of this case, is viewed as more to be shunned than the harm resulting to individual plaintiffs by allowing the transfer to stand. Orderly functioning of government demands no less. See Johnson v. Genesee County, 232 F. Supp. 567 (E.D. Mich. 1964); Scholle v. Hare, 367 Mich. 176, 116 N.W. 2d 350; Williams v. Secretary of State, 145 Mich. 447, 108 N.W. 749; and State v. Sylvester, supra.

The preferable course is to allow a properly apportioned body to remedy whatever ills have come about by acts of its malapportioned state, and this is the policy which this court will follow.

The rights involved in this case being voting rights, and as such, personal, plaintiff Board of Education of the City of Grand Rapids and intervening plaintiff City of Grand Rapids are held to have insufficient standing to remain as parties to this action. This is succinctly stated in Reynolds v. Sims, supra.

> "As stated by the Court in United States v. Bathgate, 246 US 220, 227, 62 L ed 676, 680, 38 S Ct 269, '[t]he right to vote is personal . . .'[39]
>
> 39. As stated by Mr. Justice Douglas, the rights sought to be vindicated in a suit challenging an apportionment scheme are 'personal and individual,' South v. Peters, 339 US, at 280, 94 L ed at 838, and are 'important political rights of the people,' MacDougall v. Green, 335 US 281, 288, 93 L ed 3, 69 S.Ct 1 (Douglas, J., dissenting.)" Id. at 377 U.S. 561. (Footnote by the Court.)

However, the parties should be permitted to remain in the case as amicus curiae.

Finally, there is a motion before the court to add the State Board of Education as a party defendant. Plaintiffs allege that their appeal of the decision to transfer the

disputed area to the Kentwood School District, seeking to have them transferred back to the Grand Rapids School District, was decided in an arbitrary and capricious manner, and without due process of law. The State Board did place individual plaintiffs in the Grand Rapids School District.

By decision of this court, whereby it will not overturn the acts of the *de facto* Kent Intermediate Board, it would appear that the issue on this particular point is moot, unless individual plaintiffs desire a complete return to the status quo, and wish to be placed once more in the Kentwood District, which is apparently not the case.

Thus, M.S.A. 15.3294(1) and ff. should be declared to be unconstitutional as in violation of the Equal Protection Clause of the Fourteenth Amendment, insofar as Board elections are concerned.

This court should retain jurisdiction of the action and unless the 1966 legislature were to take reasonable steps to correct this legislation in accordance with this opinion, allow plaintiffs to apply for additional relief.

(s) Noel P. Fox
District Judge

APPENDIX

Since the writing of this opinion, two cases reaching opposite results on the question here presented have been considered by the Supreme Court of the State of Michigan. (Brouwer v. Bronkema, Knudsen v. Klevering, opinions filed April 5, 1966 [Black, J., filed an opinion April 6, 1966, which created an even split on the decision]).

That court divided evenly on the issue raised by those two cases (which is the issue here), thus leaving the matter in a status which, at best, can be characterized as confused.

Thus, a citizen of Michigan has no effective recourse in situations such as this save the Federal Court.

Citizens of other states have been afforded relief from this type of malapportionment on boards of supervisors,

Bianchi v. Griffing, supra (N.Y.), Damon v. Lauderdale County Election Commissioners, supra (Miss.), State v. Sylvester, supra (Wis.); on a city council, Ellis v. Mayor and City Council, supra (Md.); and on a district school board, Delozier v. Tyrone Area School Board, 247 F. Supp. 30 (D.C. W.D. Pa., 1965).

The scope of the Fourteenth Amendment's equal protection clause is not so restricted as to overlook discrimination on the slender basis that it occurs at the county level. The protection of that Amendment is extended to anyone whose constitutional rights have been impinged by invidiously discriminatory state action, wherever that action may ultimately occur. See, e.g., Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 30 L. Ed. 220 (1886).

Justice Matthews' opinion in Yick Wo is apropo and prophetic. At page 370, 118 U.S., he said:

> "But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.' For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.
>
> "There are many illustrations that might be given of this truth, which would make manifest that it was self-evident in the light of our system of jurisprudence. The case of the political franchise of voting is one. Though not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will, under certain conditions, nevertheless it is regarded as a *fundamental political right, because preservative of all rights.*" (Emphasis supplied.)

The right to vote is a fundamental right which ranks in importance along with freedom of speech, press, assembly, and religion. NAACP v. Button, 371 U.S. 415, 9 L. Ed. 2d 405, 83 S.Ct. 328; Sherbert v. Verner, 374 U.S. 398, 10 L. Ed. 2d 965, 83 S.Ct. 1790; Wieman v. Updegraff, 344 U.S. 183, 97 L. Ed. 216, 73 S.Ct. 215; NAACP v. Alabama, 357 U.S. 449, 2 L. Ed. 2d 1488, 78 S.Ct. 1163; Bates v. Little Rock, 316 U.S. 516, 4 L. Ed. 2d 480, 80 S.Ct. 412; DeJonge v. Oregon, 299 U.S. 353, 81 L. Ed. 278, 57 S.Ct. 255; Shelton v. Trucker, 364 U.S. 479, 5 L. Ed. 2d 231, 81 S.Ct. 247; Staub v. Baxley, 355 U.S. 313, 2 L. Ed. 2d 302, 78 S.Ct. 277.

To reiterate: as my opinion makes clear, the Supreme Court has declared the right to vote on an equal basis to be personal and protected, and the result which I here urge merely applies the guarantee of the Fourteenth Amendment to this right.

APPENDIX C

The Court adjourned until May 2, 1966

Monday, May 2, 1966

The Court met pursuant to adjournment

PRESENT: The Honorable Clifford O'Sullivan, United States Circuit Judge

The Honorable W. Wallace Kent, Chief Judge, U. S. District Court

The Honorable NOEL P. FOX, District Judge, U. S. District Court

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JAMES SAILORS and LORETTA SAILORS;
SEYMOUR KONING and MILDRED KONING;
GRAZZI MULLAY and ROSALIE MULLAY;
and THE BOARD OF EDUCATION OF THE CITY OF GRAND RAPIDS, a second class school district,
Plaintiffs,

WILLIAM A. DUTHLER and ANNA M. DUTHLER;
HARVEY A. DUTHLER and EDNA M. DUTHLER;
and THE CITY OF GRAND RAPIDS, a municipal corporation,
Intervening Plaintiffs,

vs.

Civil Action No. 4480

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, and VICTOR WELLER, DEWEY JAARSMA, MARY I. KNELER, RUSSELL EMMONS, and C. B. LEAVER, as members thereof, and THE KENTWOOD PUBLIC SCHOOLS, a school district of the fourth class,
Defendants,

ATTORNEY GENERAL OF THE STATE OF MICHIGAN,
Intervening Defendant.

Monday, May 2, 1966

ORDER OF DISMISSAL

This matter is before a three-judge Court comprising the Honorable Clifford O'Sullivan, United States Circuit Judge, the Honorable W. Wallace Kent, Chief Judge, United States District Court and the Honorable Noel P. Fox, United States District Judge, on the complaint, as amended, seeking relief to have this Court declare the defendant county board of education unconstitutionally composed and to declare the statutory standards governing the decisions of the county board of education violative of the Fourteenth Amendment and constitute an improper delegation of legislative authority, and the said Court, Judge Noel P. Fox dissenting, after having heard the proofs and allegations of the parties and due consideration of briefs submitted, having filed written opinion for an order dismissing the complaint;

IT IS HEREBY ORDERED that the complaint herein, as amended, be and the same hereby dismissed.

Dated: May 2, 1966.

APPENDIX D

United States Constitution, Amendment XIV, § 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX E

28 U.S.C. § 1331:

"(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

"* * *"

28 U.S.C. § 1343:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"* * *

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

"* * *"

42 U.S.C. § 1981:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

42 U.S.C. § 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the

United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

APPENDIX F

§ 294 Michigan School Code; C.L. Mich. '48 § 340.294; M.S.A. § 15.3294:

"Each county superintendent of schools shall, in counties in which a county board of education has not been established or in case of the consolidation of 2 or more counties into a single county school district, by reasonable notice sent by registered mail call a meeting in the county of the secretaries of the boards of primary and fourth class school districts and the presidents of the boards in other school districts: Provided, That at a regular or special meeting of the board of any of the school districts, the board may by resolution designate any other member of the board to represent it. The meeting shall be held at the county seat or some other convenient place in the county on the first Monday of the second month following the effective date of this act, for the purpose of electing a county board of education. The county superintendent of schools or his deputy shall act as secretary of the meeting and keep a complete record of the proceedings. The school officers above named shall choose from their number a chairman to preside over the meeting, and it shall be his duty to appoint from those present 3 tellers or inspectors of election, whose duty it will be to conduct and canvass the votes in the election of members of the county board of education. The above named school officers shall proceed to elect by ballot a board of education of 5 members, 1 for a term of 2 years, 2 for a term of 4 years, and 2 for a term of 6 years, and biennially thereafter on the first Monday in June there shall be elected for a term of 6 years a successor or successors to the member or members whose term of office shall expire. The persons elected need not be members of the boards of education of the

county. Members of the first county board of education shall take office on the second Monday following the election. For the purpose of determining their terms of office the time between the date taking office and the next succeeding July first shall be considered 1 year. Each of said biennial elections shall be called and conducted in the same manner and by the same school officers or their successors as that of the first election, except that the meetings of secretaries and presidents of the aforementioned boards shall be held on the first Monday of June biennially and shall be called by the county superintendent of schools. After the first election the term of office of each member shall begin on the first day of July following his election. Not more than 2 members of the county board of education shall be elected from any 1 township or city. If any person elected fails to take the oath of office within 10 days after his election, or any member during his term shall die, be adjudged mentally incompetent, resign, be convicted of a felony under the penal laws of the State, or removes from the county, a vacancy shall thereby exist immediately without declaration of any officer and such vacancy shall be filled by the majority of the remaining members of the board of education. Persons appointed to fill vacancies shall hold office until the next following biennial June election, at which time persons will be elected for the unexpired term or terms. If any vacancy is not filled within 30 days after it shall have occurred, the same shall be filled by the county board of supervisors of the county. Any member of a board, after a hearing, who shall be found quilty of wilful acts of misfeasance, malfeasance, or nonfeasance in office may be removed from office by the superintendent of public instruction in accordance with the provisions of section 253 of this act. In making appointments to fill vacancies, the appointing authority shall not appoint any person whose membership on the county board of education shall cause any township or city to be represented by more than 2 members upon said board."

§ 294a Michigan School Code; C.L. Mich. '48 § 340.294a; M.S.A. § 15.3294(1):

"The members of the board shall be elected biennially on the first Monday in June by a body composed of 1 member of the board of education of each constituent school district, who shall be designated by the board of education of the constituent school district of which he is a member. The secretary shall send a notice by certified mail of the hour and place of meeting to the secretary of the board of education of each constituent school district at least 10 days prior to the meeting. The president and secretary of the board shall act as chairman and secretary, respectively, of the meeting. The term of office of each member elected to the board shall be for 6 years and shall begin on July 1 following his election, except as hereinafter provided. Not more than 2 members of the board shall be from the same school district unless there are fewer districts than there are positions to be filled. Any vacancy shall be filled by the remaining members of the board until the next biennial election. Notice of the vacancy shall be filed with the state board of education within 5 days after its occurrence. If the vacancy is not filled within 30 days after it has occurred, it shall be filled by the state board of education. Candidates for election to the board shall be nominated by petitions which shall be signed by not less than 50 school electors of the district who are registered to vote in the city or township where they reside. Any qualified elector shall be eligible to sign as many petitions as there are vacancies to be filled. Nominating petitions shall be filed with the secretary of the board not later than 30 days prior to the date of the biennial election. The secretary shall determine the sufficiency of said petitions, and the eligibility of the candidates therein nominated. The secretary shall cause to be prepared, printed or duplicated ballots for the biennial election, listing on said ballots the names of all candidates properly nominated. If no nominating petitions have been filed for a candidate to fill a vacancy then, in this event and only in this event, the chairman of the biennial election may accept nominations for that vacancy from the floor.

"The provisions of section 538 of this act shall apply to petitions for candidates for board members of intermediate districts unless herein otherwise provided."

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

Office-Supreme Court, U.S.
FILED
SEP 29 1966
JOHN F. DAVIS, CLERK

JAMES SAILORS and LORETTA SAILORS; SEYMOUR KONING and MILDRED KONING; GRAZZI MULLAY and ROSALIE MULLAY and THE BOARD OF EDUCATION OF THE CITY OF GRAND RAPIDS, a second class school district; and WILLIAM A. DUTHLER and ANNA M. DUTHLER; HARVEY A. DUTHLER and EDNA M. DUTHLER;

APPELLANTS.

vs.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, and VICTOR WELLER, DEWEY JAARSMA, MARY I. KEELER, RUSSELL EMMONS and C. B. LEAVER, as members thereof; KENTWOOD PUBLIC SCHOOLS, a fourth class school district, and THE ATTORNEY GENERAL OF THE STATE OF MICHIGAN;

APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

MOTION TO DISMISS OR AFFIRM

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS and LORETTA SAILORS; SEYMOUR KONING and MILDRED KONING; GRAZZI MULLAY and ROSALIE MULLAY and THE BOARD OF EDUCATION OF THE CITY OF GRAND RAPIDS, a second class school district; and WILLIAM A. DUTHLER and ANNA M. DUTHLER; HARVEY A. DUTHLER and EDNA M. DUTHLER;

APPELLANTS,

vs.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, and VICTOR WELLER, DEWEY JAARSMA, MARY I. KEELER, RUSSELL EMMONS and C. B. LEAVER, as members thereof; KENTWOOD PUBLIC SCHOOLS, a fourth class school district, and THE ATTORNEY GENERAL OF THE STATE OF MICHIGAN;

APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

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MOTION TO DISMISS OR AFFIRM

Appellees, pursuant to Rule 16, paragraph 1(c) of the Rules of this Court, move that the appeal be dismissed, or, alternatively, that the judgment of the District Court be affirmed on the grounds that appellants, whether corporate or individual, have no standing to invoke the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, and it is manifest that the question on which the decision of the cause depends is so unsubstantial as not to need further argument.

MICHIGAN CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Pertinent Michigan constitutional provisions (1908 and 1963) relating to education are set forth in Appendix C, *infra*, at pages 29b and 30b.

The powers and duties of a county (intermediate) board of education, as provided by § 297 of The School Code of 1955, as amended (CL 1948, § 340.297; MSA § 15.3297) are set forth in Exhibit 1, attached to Appendix A, *infra*, at pages 18b-21b.

The powers and duties of a board of education of a county (intermediate) school district, as provided by § 298a of The School Code of 1955, as added by Act No. 190 PA 1962, effective March 28, 1963 [CL 1948, § 340.298a; MSA 15.3298 (1)], are set forth in Exhibit 3, attached to Appendix A, *infra*, at pages 21b-25b.

Extracts from the Michigan statutory provisions with reference to the transfer of territory between school districts and the qualifications of school electors are set forth in Appendices D and E, respectively, *infra*, pp. 31b-34b.

QUESTIONS PRESENTED BY THIS MOTION TO DISMISS OR AFFIRM

The questions presented by this motion of appellees to dismiss or affirm are the following:

1. Does appellant The Board of Education of the City of Grand Rapids, as a municipal corporation, have privileges or immunities under the Federal Constitution which it may invoke against its creator?

2. Does the Michigan statute which provides for the election of members of the county (intermediate) board of education by vote of a body composed of 1 member of the board of education of each constituent school district, who shall be designated by the board of education (pop-

ularly elected by school electors) of the constituent school district of which he is a member, deny the equal protection of the laws to the individual appellants where neither the Michigan Constitution nor any State statute confers a vote upon them for the office of member of the county (intermediate) board of education, and does such question present a substantial Federal question for determination by this Court?

STATEMENT OF THE CASE

Appellee Kentwood Public Schools was created July 1, 1958, by the consolidation of 6 elementary school districts, to provide kindergarten through 12th grade education (App. A, *infra*, p. 3b).

Prior to the political annexation and transfer of territory, which triggered this litigation, there had been 9 detachments of territory from Kentwood Public Schools by political annexations to the City of Grand Rapids under the Home Rule Act (§ 6, Act No. 279 of the Public Acts of 1909, as amended; 1948 Compiled Laws of Michigan, § 117.6; Michigan Statutes Annotated, § 5.2085), which territory, so politically annexed, became a part of appellant school district, without a vote of the school electors of appellee Kentwood Public Schools, by virtue of § 143 of The School Code of 1955 (CL 1948, § 340.143; MSA § 15.3143) which provided:

> "Whenever territory shall be annexed to a city comprising a school district of the second class, such territory, by such annexation, shall become and be part of the school district of that city."

From 1958 through December 31, 1962, there were 35 political annexations of territory to the City of Grand Rapids, which territory became a part of appellant school district, by operation of law (App. A, *infra*, pp. 3b-4b).

The 4 areas involved in this litigation comprised territory which became part of the Kentwood school district on consolidation July 1, 1958. These 4 areas, with a 1964

state equalized valuation for tax purposes of $5,370,000, and upon which stood a modern, 14-classroom elementary school, were politically annexed to the City of Grand Rapids under the Home Rule Act, effective December 31, 1962 (App. A, *infra*, pp. 5b and 13b).

The 1962 Michigan Legislature repealed § 143 of The School Code by Act No. 171 PA 1962, and was approved by the Governor May 17, 1962. However, as the act was not given immediate effect, it did not take effect until March 28, 1963 (App. A, *infra*, p. 4b).

Because the repeal of § 143 did not save these 4 areas from becoming a part of appellant The Board of Education of the City of Grand Rapids, the Board of Education of Kentwood Public Schools on January 1, 1963, by proper resolutions, requested appellee the Board of Education of the County of Kent to transfer these 4 areas back to Kentwood Public Schools, under the transfer provisions of chapter 5, part 2, of The School Code (CL 1948, § 340.461, et seq; MSA § 15.3461, et seq), extracts from which are set forth in Appendix D, *infra*, pp. 31b and 32b. See Appendix A, *infra*, p. 6b.

Appellee the Kent County Board of Education held extensive hearings on the request and, at the final hearing February 6, 1963, it was publicly announced by the president of the county board of education that a decision would be rendered February 25, 1963 (App. A, *infra*, pp. 6b and 7b).

February 15, 1963, appellants James Sailors and Loretta Sailors, Seymour Koning and Mildred Koning, Grazzi Mullay and Rosalie Mullay, the original individual plaintiffs, and appellant The Board of Education of the City of Grand Rapids filed the complaint herein seeking to enjoin the county board of education from acting on the requested transfer, to declare the county board unconstitutionally constituted, to enjoin further elections until the malapportionment was brought into balance, and to declare the absence of any statutory standards governing the decisions of the county board violative of due process and an improper delegation of legislative authority. On filing the complaint Chief District Judge Wallace Kent en-

tered an ex parte order restraining the county board from assuming jurisdiction of the requested transfer and from rendering a decision thereon (App. A, *infra*, p. 8b).

In the afternoon of February 25, 1963, on motion of Kentwood Public Schools, Judge Kent revoked the temporary restraining order, without prejudice to renew. That evening the county board adopted a resolution transferring the 4 areas from appellant The Board of Education of the City of Grand Rapids to appellee Kentwood Public Schools (App. A, *infra*, p. 8b). The complaint was then amended to set aside the transfer.

A three-judge court was constituted to hear appellants' complaint and by order entered March 4, 1963, denied the motion of appellants to reinstate the restraining order and likewise denied their application for an interlocutory injunction at that time. Appellees' motions to dismiss the complaint were held in abeyance and the Court retained its jurisdiction "awaiting the plaintiffs' exercise of their administrative remedies provided by the Michigan Statutes, and, if they so choose, their application to the Supreme Court of Michigan for writ of certiorari to review the action of the state board of education" (App. A, *infra*, p. 12b).

Appellants (the original plaintiffs) appealed the order of transfer to the State Board of Education, pursuant to § 467 of The School Code of 1955, as amended (CL 1948, § 340.467; MSA § 15.3467), which section is set forth in Appendix D, *infra*, pp. 31b and 32b. See Appendix A, *infra*, p. 12b.

The State Board of Education, which has never been made a party to this litigation, was constituted by § 6, Article XI of the 1908 Constitution, the 4 members of which were elected at large by the people of the State (App. A, *infra*, p. 12b). This section is set forth in Appendix C, *infra*, p. 29b.

June 5, 1963, the State Board of Education entered an order setting aside the action of appellee the Board of Education of the County of Kent taken February 25, 1963, and ordered that the territory involved be transferred from appellant The Board of Education of the City of

Grand Rapids to appellee Kentwood Public Schools, except for the property owned and occupied by the original individual plaintiffs, appellants James Sailors and Loretta Sailors; Seymour Koning and Mildred Koning; Grazzi Mullay and Rosalie Mullay and two other lots owned by others (App. A, *infra*, pp. 12b and 13b).

Application to the Supreme Court of Michigan for leave to appeal the order of the State Board of Education was not made and the order of the State Board of Education has become final (App. A, *infra*, p. 14b).

Appellants William A. Duthler and Anna M. Duthler; Harvey A. Duthler and Edna Duthler intervened as parties plaintiff by order entered June 4, 1964 (App. A, *infra*, p. 13b). These appellants are school electors of Kentwood Public Schools (App. A. *infra*, p. 13b). The original individual plaintiffs, James Sailors and Loretta Sailors; Seymour Koning and Mildred Koning; Grazzi Mullay and Rosalie Mullay, are school electors of appellant school district and not of Kentwood, by reason of the order of the State Board of Education (App. A, *infra*, pp. 12b and 13b).

After filing the Stipulation of Facts May 3, 1965 (App. A, *infra*, pp. 1b through 25b) and the issues of law as filed by both appellants and appellees [see the Issues of Law Agreed to by Defendants (appellees), App. B, *infra*, pp. 26b through 28b], the three-judge court heard the case on the merits August 25, 1965.

The opinions (254 F Supp 17; Jurisdictional Statement Appendices A and B, pp. 1a through 23a) were filed May 2, 1966, and the order dismissing the complaint, as amended, (Jurisdictional Statement App. C, pp. 24a and 25a) was entered May 2, 1966.

ARGUMENT

I

Appellant The Board of Education of the City of Grand Rapids, as a municipal corporation, has no privileges or immunities under the Federal Constitution which it may invoke against its creator and has no standing on this appeal

Appellant The Board of Education of the City of Grand Rapids is a school district of the second class, organized and existing under the provisions of chapter 5, part 1 of The School Code of 1955, as amended (CL 1948, § 340.141, et seq; MSA § 15.3141, et seq) and is a municipal corporation (*Attorney General ex rel McRae v Thompson*, 168 Mich 511, 134 NW 722), created by the State of Michigan for the better ordering of education in the State, and, as such, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of the State.

In *Williams v Baltimore*, 289 US 36, 77 L ed 1015, 53 S Ct 431, where the question was squarely raised, the General Assembly of Maryland adopted a statute exempting the property of a particular railroad from taxation. The mayor and City Council of Baltimore, and the mayor, counselor and aldermen of the City of Annapolis, municipal corporations, challenged the statute as invalid under the Fourteenth Amendment to the Constitution of the United States.

Mr. Justice Cardozo, in delivering the unanimous opinion of the court, disposed of this question in 2 one sentence paragraphs as follows (289 US 40, 77 L ed 1020, 53 S Ct 432):

> "1. There is error in the holding of the Circuit Court of Appeals that the statute of Maryland creating this exemption is a denial to the respondents of the equal protection of the laws in violation of the

Fourteenth Amendment of the Constitution of the United States.

> "A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator. (Citing cases)."

Coleman v Miller, 307 US 433, 441, 83 L ed 1385, 1390, 59 S Ct 972, 976; *City of Houston v State*, 142 Tex 190, 176 SW 2d 928, appeal dismissed for want of substantial federal question, citing *Williams*, 322 US 711, 88 L ed 1554, 64 S Ct 1159.

In *Lansing District v State Board of Education*, 367 Mich 591, 116 NW 2d 866, Mr. Justice Kavanagh, writing for a unanimous Court, held (367 Mich 600, 116 NW 2d 870):

> "We do not believe plaintiff (The School District of the City of Lansing) is a proper party to raise the question of whether or not its residents have the right to vote on the transfer. This right, if existing at all, would exist in the voters and not in the school district. Plaintiff school district is an agency of the State government and is not in a position to attempt to attack its parent. The question of how and where individuals would vote is a question between the individuals themselves and the government."

Title 42 United States Code § 1983 grants a civil action for the deprivation of rights to "every person". *Monroe v Pape*, 365 US 167, 191, 5 L ed 2d 492, 507, 81 S Ct 473, 486, squarely holds that a municipal corporation is not a "person" within the meaning of § 1983. See also *Egan v City of Aurora*, 365 US 514, 5 L ed 2d 741, 81 S Ct 684.

District Judge Fox, in his dissenting opinion, correctly recognized this lack of standing on the part of appellant The Board of Education of the City of Grand Rapids, when he said (254 F Supp 27; Jurisdictional Statement, Appendix B, p. 20a):

"The rights involved in this case being voting rights, and as such, personal, plaintiff Board of Education of the City of Grand Rapids and intervening plaintiff City of Grand Rapids are held to have insufficient standing to remain as parties to this action."(1)

Clearly, appellant The Board of Education of the City of Grand Rapids has no standing on this appeal and should be dropped as an appellant.

II

The question presented on this appeal (Jurisdictional Statement, page 3) is so unsubstantial as not to need further argument

The one-man one-vote doctrine, enunciated in *Reynolds v. Sims*, 377 US 533, 12 L ed 2d 506, 84 S Ct 1362, assumes that the one man has a constitutional or statutory absolute right to vote. Appellees contend that the individual appellants had and have no absolute right to vote for members of a Michigan county (intermediate) board of education, under the Constitution and laws of the State as historically interpreted and construed by the Supreme Court of Michigan.

(a) Historically in Michigan it has never been considered that the qualifications of school electors must be identical with those prescribed for general electors in the Constitution

In *Belles v Burr*, 76 Mich 1, 43 NW 24, it was held (76 Mich 11, 43 NW 28):

"Viewing the questions historically, it is apparent that for 50 years it has never been considered that the qualifications of voters at school-district meetings must be identical with those prescribed in the Con-

(1) The City of Grand Rapids is not a party to this appeal.

stitution as qualifications of electors entitled to vote under that instrument. The authority granted by the Constitution to the Legislature to establish a common or primary school system carried with it the authority to prescribe what officers should be chosen to conduct the affairs of the school-districts, to define their powers and duties, their term of office, *and how and by whom they should be chosen* (emphasis supplied).

"School-districts are regarded as municipal corporations. *School-district v Gage*, 39 Mich 484; *Seeley v Board of Education*, Id. 486. As such they preceded the Constitution (*Stuart v School-district*, 30 Mich. 69), and were recognized by that instrument (Const. 1835, Art. 10, § 3; Const. 1850, Art. 13, § 5). But no officer of the school-district is mentioned or recognized by that instrument. The reason is that the whole primary school system was confided to the Legislature, and it cannot be said that the officers of school-districts, chosen pursuant to the system adopted by the Legislature, are constitutional officers. The Constitution provided for no municipal subdivisions smaller than towns, except cities and villages, and it authorized the Legislature to incorporate these. Const. 1850, Art. 15, § 13."

After 127 years it has never been considered that the qualifications of Michigan school electors "must be identical with those prescribed in the Constitution as qualifications of electors entitled to vote under that instrument".

Although since 1951 (Act No. 257 PA 1951), the qualifications of Michigan school electors have been the same as those prescribed by the Constitutions of 1908 and 1963, such qualifications have been prescribed by the school code and not by the Constitutions. See Appendix E, *infra*, pp. 33b-34b, for the qualifications of school electors found in the school code under the Michigan Constitutions of 1908 and 1963.

The rule of *Belles, supra*, has always been the law of Michigan.

(b) Education in Michigan belongs to the State. It is no part of the local self-government inherent in the township or municipality except so far as the Legislature may choose to make it such

In *Attorney General v Detroit Board of Education*, 154 Mich 584, 118 NW 606, the Supreme Court quoted with approval the opinion of the judges of the Wayne County Circuit Court, which, in part, was as follows (154 Mich 590, 118 NW 609):

> "Education in Michigan belongs to the State. It is no part of the local self-government inherent in the township or municipality, except so far as the Legislature may choose to make it such. The Constitution has turned the whole subject over to the Legislature. *Belles v Burr*, 76 Mich 1."

We quote from *MacQueen v Port Huron City Commission*, 194 Mich 328, 160 NW 627, as follows (194 Mich 336, 160 NW 629):

> "Fundamentally, provision for and control of our public school system is a State matter, delegated to and lodged in the State legislature by the Constitution in a separate article entirely distinct from that relating to local government. The general policy of the State has been to retain control of its school system, to be administered throughout the State under State laws by local State agencies organized with plenary powers independent of the local government with which, by location and geographical boundaries, they are necessarily closely associated and to a greater or less extent authorized to cooperate. Education belongs to the State. It is no part of the local self-government inherent in the township or municipality except so far as the legislature may choose to make it such. *Belles v Burr*, 76 Mich 1 (43 NW 24); *Attorney General v Board of Education*, 154 Mich 584 (118 NW 606). The general school laws were carefully planned and enacted to guard that distinction;

provision was made for organization of the common school districts, with officers elected at school meetings by electors with defined qualifications, and who as a school board were given large plenary powers and control of school matters, practically independent from the local government of municipalities in which the schools were situated."

Ruppert v Township School District, 252 Mich 482, 233 NW 387, quoting from *MacQueen, supra*, at page 336 (252 Mich 486-7, 233 NW 389); *Jones v Grand Ledge Public Schools*, 349 Mich 1, 84 NW 2d 327, also quoting *MacQueen, supra*, at page 5 (84 NW 2d 329) and *Lansing District v State Board of Education, supra*.

(c) Historically the Michigan Legislature has prescribed that members of the boards of education of the various classifications of school districts be elected at large

In Michigan, in addition to a handful of school districts created by special acts of the legislature, known as special act school districts, there are 5 classifications of school districts, namely: primary school districts, fourth class school districts, third class school districts, second class school districts and first class school districts. The School Code of 1955, § 2; CL 1948, § 340.2; MSA § 15.3002. By statutory school census requirements, Detroit is the only first class school district and Grand Rapids and Flint are the only two second class school districts. The members of the boards of education of all 5 classifications of school districts are elected at large. This is recognized by District Judge Fox, in his dissent, when he said (254 F Supp 24, Jurisdictional Statement, Appendix B, p. 15a): "For even though members of local school districts are elected by popular election, the election of the 5 members of the Intermediate Board is by majority vote of the constituent school districts in the county, regardless of the respective populations of the several school districts."

(d) County (intermediate) school districts were first created in 1935, are state agencies distinct from the 5 classifications of school districts and did not supersede or replace such school districts

County (intermediate) school districts were first created by Act No. 117 of the Public Acts of Michigan of 1935, known as "the County School District Act" (CL 1948, § 388.171, et seq, MSA § 15.161, et seq).

Section 2 of the 1935 act (CL 1948, § 388.172; MSA § 15.162) specifically provided that:

> "Said county school district shall include all the territory of the county but it shall not supersede nor replace any of the school districts organized and operating under laws enforced at the time of the passage of this act, nor shall it control or otherwise interfere with the rights of said school districts, except as hereinafter provided in this act."

The statutory powers and duties of county (intermediate) school districts are set forth in full in Exhibits 1 and 3 of Appendix A, *infra*, pp. 18b-25b and are distinct from the powers and duties of constituent or local school districts of the classifications previously mentioned.

(e) In creating county boards of education, the Legislature, exercising its plenary power over education under the Constitution, did not provide for the popular election of members of the boards of education of such county school districts

In creating county school districts, the Legislature, acting under its plenary constitutional power, did not provide for the popular election of members of the boards of education of such county school districts. Rather, it was provided that the 5 members of each county board would be chosen at a meeting in the county of representatives from each of the constituent local school districts. The

statutory method of selecting board members is set forth in Appendix F to the Jurisdictional Statement, pp. 27a-30a. The Jurisdictional Statement does not mention that in 1962 the Legislature provided for a referendum on the popular election of members of intermediate boards of education. Act No. 190 of the Public Acts of 1962, effective March 28, 1963, as amended by Act No. 290 PA 1964 and Act No. 52 PA 1965 (§§ 294b through 294h, CL 1948 340.294b, et seq; MSA § 15.3294 (2), et seq.

(f) A Michigan school elector does not have an absolute right to vote for members of county (intermediate) boards of education and the Legislature is the only body which can give such right

In the recent 1962 case of *Lansing District v State Board of Education, supra,* a transfer of territory between school districts was involved and one of the questions presented was the following (367 Mich. 594, 116 NW 2d 868):

> "3. Is section 461 of the school code unconstitutional as denying to plaintiff the equal protection of the laws, in that it grants a vote on the question of transfer of territory to the districts from which detachment is made, while denying a vote to the district to which the territory is transferred?"

In disposing of this question, Mr. Justice Kavanagh (now Chief Justice), writing for a unanimous court, held (367 Mich 599, 116 NW 2d 870):

> "The third question raised by plaintiff school district is whether section 461 of the school code of 1955 is unconstitutional as denying to plaintiff the equal protection of the laws in that it grants a vote on the question of transfer of territory to the district from which detachment is made, while denying a vote to the district to which the territory is transferred.
>
> "Plaintiff does not question that the authority to alter boundaries may be delegated without the consent of the inhabitants of the territory annexed or the

municipality to which it is annexed, or even against its express protest. Its claim is that to deny one district a vote with reference to the transfer and permit a vote in the other district is to deny the equal protection of the laws contrary to the provisions of both the State and Federal Constitutions. These objections have been disposed of against plaintiff's contention by the following decisions, which we content ourselves with citing: *Hunter v City of Pittsburgh*, 207 US 161 (28 S Ct 40, 52 L ed 151); *Attorney General, ex rel Battishill, v Springwells Township Board*, 143 Mich 523.

"In order to deny the eqnal protection of the laws contrary to the provisions of the State and Federal Constitutions, it would be necessary for the electors in plaintiff school district to have an absolute right to vote on the annexation question. The above mentioned decisions clearly indicate they do not have such a right. The legislature is the only body that could give plaintiff school district such a right. This it has omitted. Not being entitled to the right, the fact that it is given to one district and not to the other does not deny the equal protection of the laws contrary to the provisions of the State and Federal Constitutions."

The Michigan Legislature has not given the individual appellants the absolute right to vote for members of county (intermediate) boards of education. The legislature is the only body that could give appellants such right. This having been omitted, the individual appellants are not entitled to the right.

At least since *Belles, supra,* it has been the law of Michigan that the legislature, under the various Constitutions of Michigan, has plenary power to determine how school board members should be chosen and upon what matters school electors could vote. Whether a school elector has or has not the right to vote for members of a county (intermediate) school district is of State concern only.

(g) The statutes and cases cited and relied upon by appellant do not sustain the jurisdiction of this Court to review the judgment on appeal

Appellees contend that the statutes and cases cited and relied upon by appellants in their Jurisdictional Statement, at page 2a, do not sustain the jurisdiction of this Court to review the judgment on appeal in this case.

Appellants claim jurisdiction under 42 USC §§ 1981, 1983 and 28 USC §§ 1331, 1343 (Jurisdictional Statement, p. 2).

42 USC § 1981 secures to "all persons" the same rights "enjoyed by white citizens" and has no application, because no racial issue is involved in this case.

42 USC § 1983 provides civil action for the deprivation of rights, privileges, or immunities secured by the Constitution and laws of the United States.

28 USC § 1331(a) grants original jurisdiction to the district courts of civil actions arising "under the Constitution, laws, or treaties of the United States."

28 USC § 1343(4) is the so-called civil rights and elective franchise provision of the Civil Rights Act of 1948 as amended in 1954 and 1957.

Nixon v Herndon, 273 US 536, 71 L ed 759, 47 S Ct 446; *Smiley v Holm*, 285 US 355, 76 L ed 795, 52 S Ct 397; *United States v Classic*, 313 US 299, 85 L ed 1368, 61 S Ct 1031 and *United States v Saylor*, 322 US 385, 88 L ed 1341, 64 S Ct 1101 have no relevancy to the case at bar.

Baker v Carr, 369 US 186, 7 L ed 2d 663, 82 S Ct 691, held that alleged malapportionment of a state legislature was justiciable and that plaintiffs-appellants, being qualified to vote for members of the Tennessee legislature, had standing.

Mr. Justice Douglas, in his concurring opinion, stated (369 US 247, 7 L ed 2d 703, 81 S Ct 726):

> "The right to vote in both federal and state elections was protected by the judiciary long before that right

received the explicit protection it is now accorded by § 1343(4). Discrimination against a voter on account of race has been penalized (Ex parte Yarbrough, 110 US 651, 28 L ed 274, 4 S Ct 152) or struck down. Nixon v Herndon, 273 US 536, 71 L ed 759, 47 S Ct 446; Smith v Allwright, 321 US 649, 88 L ed 987, 64 S Ct 757, 151 ALR 1110; Terry v Adams, 345 US 461, 97 L ed 1152, 73 S Ct 809. Fraudulent acts that dilute the votes of some have long been held to be within judicial cognizance. Ex parte Siebold, 100 US 371, 25 L ed 717. The 'right to have one's vote counted' whatever his race or nationality or creed was held in United States v Mosley, 238 US 383, 386, 59 L ed 1355, 1356, 35 S Ct 904, to be 'as open to protection by Congress as the right to put a ballot in a box'. See also United States v Classic, supra (313 US 324, 325); United States v Saylor, 322 US 385, 88 L ed 1341, 64 S Ct 1101."

We do not question the absolute right of a qualified voter to vote in both Federal and State elections and to have his vote counted without dilution and that such right should be protected by the judiciary, whether Federal or State. But in the context of this case, appellants had and have no right to vote.

In *Wesberry v Sanders*, 376 US 1, 11 L ed 2d 481, 84 S Ct 526, a Georgia statute apportioned congressional districts on a geographical basis. Appellants brought suit as citizens and qualified voters of Fulton County and entitled to vote in congressional elections in Georgia's Fifth Congressional District, claiming malapportionment of congressional districts throughout the State. The Court held that in congressional elections the equal protection clause of the Federal Constitution forbids either the weighting of the votes of residents of one part of the state more heavily than those residents in another part of the state, or accomplishing the same dilution of votes through a device of districts containing widely varied numbers of inhabitants. The decision in *Wesberry* would be controlling here if the individual appellants had the right to vote for members of the county (intermediate) board of education

and if the Michigan statute weighted the votes of the individual appellants for members of the county (intermediate) board of education so that the votes of other residents in the county (intermediate) school district were weighted more heavily or if the Michigan statute accomplished the same dilution of the votes of the individual appellants through the device of districts containing widely varied numbers of inhababitants. Here none of the individual appellants had or have any right to vote.

Nor is the decision in *Gray v Sanders*, 372 US 368, 9 L ed 2d 821, 83 S Ct 801, persuasive for the reason that there the appellee was a qualified elector voting in a state-wide party primary for the nomination of candidates for U.S. Senator and other state-wide offices. After he cast his vote for such candidates, a Georgia statute required that his vote be counted for such offices and be given a weight based upon the county in which he resided. The court held that once the geographical unit, for which a state-wide public officer is to be chosen, is designated, every qualified voter who participates in the election must have an equal vote. Unlike *Gray*, none of the individual appellants participated in an election for members of a county (intermediate) board of education, because they did not have the right to vote.

This Court held in *Reynolds v Sims*, supra, that persons voting for members of the legislature could not have their votes weighted differently according to where they happened to reside without offending the equal protection clause of the United States Constitution. It must be stressed that the original plaintiffs had the right to vote for members of the Alabama legislature. Such holding is not applicable here because none of the individual appellants has a right conferred either by the Michigan Constitution or statutes to vote for members of the county (intermediate) board of education.

WMCA v. Lomenzo, 377 US 633, 12 L ed 2d 568, 84 S Ct 1418; *Davis v Mann*, 377 US 678, 12 L ed 2d 609, 84 S Ct 1453; *Roman v Sincock*, 377 US 695, 12 L ed 2d 620, 84 S Ct 1462; and *Lucas v Colorado General Assembly*, 377

US 713, 12 L ed 2d 632, 84 S Ct 1472, follow and apply *Reynolds*.

The question presented on this appeal is so unsubstantial as to need no further argument.

Appellees urge that the appeal be dismissed, or, in the alternative, that the judgment of the District Court be affirmed, because of appellants' lack of standing or because no Federal question is presented.

III

The transfer of territory to appellee Kentwood Public Schools should stand

Should the Court note probable jurisdiction, appellees urge the Court to affirm the unanimous decision of the District Court allowing the transfer of territory to appellee Kentwood Public Schools to stand.

The transferred territory was originally a part of the Kentwood school district and only became a part of the Grand Rapids school district by operation of law, *supra*, pp. 3 and 4. The county board of education transferred the territory back to Kentwood and the State Board of Education on appeal set aside the action of the county board and entered its own order transferring somewhat less of the territory to Kentwood, *supra*, pp. 5 and 6.

The four members of the State Board of Education were elected at large by the people of the State. The State Board of Education is not a party to this litigation, *supra*, p. 5.

The transferred territory has a tax base of over five million dollars and a modern, 14-classroom elementary school is located thereon, *supra*, pp. 3, 4 and 13b.

Appellees argued before the District Court that even if the county board of education was malapportioned, the act of the county board was that of a *de facto* body and valid. Appendix B, p. 28b (14).

Judge Fox held (254 F Supp 26; Jurisdictional Statement, App. B, p. 20a):

> "Following the well established principle that acts of a *de facto* body have full legal effect, the Court is not disposed to grant plaintiffs this facet of the relief they seek. The possible harm in setting a precedent of this sort, even on the facts of this case, is viewed as more to be shunned than the harm resulting to individual plaintiffs by allowing the transfer to stand. Orderly functioning of government demands no less. See Johnson v Genesee County, 232 F Supp 567 (E.D. Mich, 1964); Scholle v Hare, 367 Mich 176, 116 NW 2d 350; Williams v Secretary of State, 154 Mich 447, 108 NW 749; and State v Sylvester, Supra.
>
> "The preferable course is to allow a properly apportioned body to remedy whatever ills have come about by acts of its malapportioned state, and this is the policy which this court will follow."

Judges O'Sullivan and Kent concurred with Judge Fox, holding (254 F Supp 28, Jurisdictional Statement, App. A, p. 1a):

> "We find ourselves in a position where we concur with Judge Fox, writing for the Court, in reaching the conclusion that this Court will not overturn the acts of the de facto Kent Intermediate Board."

The transfer to Kentwood Public Schools should stand.

RELIEF SOUGHT

Appellees urge the Court to dismiss the appeal, or, in the alternative, to affirm the judgment of the District Court, on the grounds that appellants have no standing to invoke the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, and it is manifest that the question on which the decision of the cause

depends is so unsubstantial as not to need further argument.

Should the Court note probable jurisdiction, then appellees urge that:

1. The Board of Education of the City of Grand Rapids be dropped as an appellant on the ground it has no standing on the appeal; and

2. The Court affirm the unanimous decision of the District Court allowing the transfer of territory to appellee Kentwood Public Schools to stand.

September 26, 1966.

Respectfully submitted,

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APPENDIX A

(Filed May 3, 1965)

United States District Court
For The Western District Of Michigan
Southern Division

JAMES SAILORS, et al,
Plaintiffs,

vs. Civil Action No. 4480

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, et al,
Defendants.

STIPULATION OF FACTS

Counsel for the respective parties hereby stipulate the following facts:

1. This cause was commenced February 15, 1963 seeking an injunction and declaratory relief. The complaint alleges that this action arises under the Fourteenth Amendment to the United States Constitution and §§ 1981 and 1983 of Title 42 of the United States Code and that jurisdiction is conferred by §§ 1331 and 1343 of Title 28 of the United States Code.

2. Prior to December 31, 1962, plaintiffs James Sailors, Loretta Sailors, Seymour Koning, Mildred Koning, Grazzi Mullay and Rosalie Mullay and intervening plaintiffs William A. Duthler, Anna M. Duthler, Harvey A. Duthler and Edna M. Duthler were resident-electors and freeholders of Paris Township, Kent County, Michigan and were school electors of defendant Kentwood Public Schools, Kent County, Michigan, a school district of the fourth class, under the provisions of chapter 3, part 1 of the school code of 1955, as amended (Act No. 269 of the Public Acts of Michigan of 1955, as amended; § 340.51 of the 1948

Compiled Laws of Michigan, et seq; Michigan Statutes Annotated § 15.3051, et seq).

3. Plaintiff The Board of Education of the City of Grand Rapids has continued to be and is now a school district of the second class under the provisions of chapter 5, part 1 of the school code of 1955, as amended (CL 1948, § 340.141, et seq; MSA § 15.3141, et seq), located within the city limits of intervening plaintiff, The City of Grand Rapids.

4. Intervening plaintiff The City of Grand Rapids is a home rule city, under Act No. 279 of the Public Acts of Michigan of 1909, as amended (CL 1948, § 117.1, et seq; MSA § 5.2071, et seq).

5. At the time of commencement of this action, February 15, 1963, defendant the Board of Education of the County of Kent was the board granted supervision and control of the county school district, under chapter 8, part 1 of the school code of 1955, as amended (CL 1948, § 340.291, et seq; MSA § 15.3291, et seq), the powers and duties of which were set forth in § 297, chapter 8, part 1 of the school code of 1955, as amended (CL 1948, § 340.297; MSA 15.3297), which section is attached hereto and marked Exhibit 1.

(a) At annual school elections held in Kent County in 1957, the provisions of §§ 309 to 327, inclusive of the school code of 1955, as amended (CL 1948, §§ 340.309 to 340.327, inclusive; MSA §§ 15.3309 to 3327, inclusive) with reference to special education became effective and from 1957 defendant the Board of Education of the County of Kent, since March 28, 1963 known as the "Board of Education of the Kent Intermediate School District" has levied each year an ad valorem tax of one-half mill for such purpose. The annual amounts of such levy for the operation of such special education program are set forth in Exhibit 2.

6. Act No. 190 of the Public Acts of 1962, effective March 28, 1963, repealed all of chapter 8, part 1 of the school code of 1955, as amended, with reference to county school districts and in lieu thereof added 45 new sections to stand as §§ 291a to 328a of the school code of 1955 (CL 1948, §§ 340.291a to 328a; MSA §§ 15.3291(1) to 15.3328(1).

Under this statute the name of defendant the Board of Education of the County of Kent became the "Board of Education of the Kent Intermediate School District". The special education provisions became §§ 307a to 324a (CL 1948, §§ 340.307a to 340.324a; MSA §§ 15.3307(1) to 15.3324(1). The powers and duties of the board of education of an intermediate school district are set forth in § 298a of the new act [CL 1948, § 340.298a; MSA §15.3298(1)], which section is attached hereto and marked Exhibit 3.

(a) Commencing with the year 1963, defendant, as the Board of Education of the Kent Intermediate School District, under said Act No. 190 PA 1962, levied ad valorem taxes for operations on a county-wide basis, in addition to the one-half mill for special education (see Exhibit 2), as follows: 1963, $92,781.94 (.08 mill) and 1964, $100,938.85 (.085 mill).

7. Defendant Kentwood Public Schools was created for the purpose of providing kindergarten through 12th grade education, July 1, 1958, by the consolidation of 6 elementary school districts, one of them being the so-called Alexander Hamilton School District, upon which the modern 14-classroom Alexander Hamilton School was located, under the provisions of chapter 3, part 2 of the school code of 1955, as amended (CL 1948 § 340.401, et seq; MSA §15.3401, et seq, see Exhibit D attached to the complaint). Since the creation of defendant Kentwood Public Schools July 1, 1958, and prior to the annexation and transfer of the 4 areas involved in this litigation, there were 9 detachments of territory from defendant Kentwood Public Schools by annexation under the home rule act (one of such annexations having been voted before, but did not become effective until after defendant Kentwood Public Schools was created) and the operation of § 143 of the school code of 1955, with the 1962 state equalized valuation of $10,935,523, $12,726,860 in 1963 and $14,018,810 in 1964 (see Exhibit 4 which is a district map of defendant Kentwood Public Schools showing the 9 detachments of territory, which are numbered 1 through 9 on the legend). These 9 detachments resulted in an average valuation per pub-

lic school child of $11,151.00 in 1962 as compared with $14,350.00 prior to such detachments.

(a) Commencing with 1958 through December 31, 1962 there were 35 annexations of territory to intervening plaintiff The City of Grand Rapids under the home rule act and by operation of §143 of the school code of 1955 (CL 1948, § 340.143; MSA § 15.3143) which provided as follows:

> "Whenever territory shall be annexed to a city comprising a school district of the second class, such territory, by such annexation, shall become and be part of the school district of that city;"

such territory, by such annexations, became a part of plaintiff school district. During this period the valuation of all the areas annexed to plaintiff school district totalled $89,277,206 and such areas contained 4,403 children in the public schools resulting in an average valuation per public school child of $20,274 as compared with $22,426 per child in plaintiff school district prior to such annexations. See Exhibit 5 for map showing growth of Grand Rapids and plaintiff school district during this period and Exhibit 6 for map showing all the school districts within Kent County as of July 1, 1963.

8. The 1962 Michigan legislature in effect repealed § 143 of the school code of 1955 by Act No. 177 PA 1962, approved by the Governor of the State of Michigan May 17, 1962, but, as the act was not given immediate effect, it did not take effect until March 28, 1963.

9. On proper petitions to the Board of Supervisors, Kent County, Michigan, signed by the requisite number of qualified electors and freeholders residing in the City of Grand Rapids and in Paris Township, and after consideration by the Board of Supervisors, the Supervisors ordered that special elections be held in said city and township February 19, 1962, for the purpose of submitting to the electors in the City of Grand Rapids and in Paris Township the following 3 questions:

> "Shall territory in the Township of Paris, Kent County, Michigan, popularly known as Breton Ave-

nue area, be annexed to the City of Grand Rapids, Michigan?"

"Shall territory in the Township of Paris, Kent County, Michigan, popularly known as Kendall area, be annexed to the City of Grand Rapids, Kent County, Michigan?"

"Shall territory in the Township of Paris, Kent County, Michigan, popularly known as Fuller-44th area, be annexed to the City of Grand Rapids, Kent County, Michigan?"

The individual plaintiffs and individual intervening plaintiffs understood that by voting annexation to the City of Grand Rapids, under the home rule act, the territory annexed upon which they resided would become a part of plaintiff school district.

The resolutions of the board of supervisors provided that if the annexations were accomplished, they would be effective as of December 31, 1962, at 12:01 a.m.

All of the annexations proceedings were regular and were taken under the provisions of §§ 6, 7, 8 and 9 of the home rule act, as amended. The votes were favorable on the 3 proposed annexations. See Exhibits 7, 8 and 9. See Exhibits 10, 11 and 12 showing territory involved in the 3 annexations.

10. The Alger Street area, located in Paris Township within the boundaries of defendant Kentwood Public Schools, and uninhabited, was detached from Paris Township and annexed to the City of Grand Rapids by the affirmative vote of the legislative bodies of said township and city, under the provisions of § 9 of the home rule act, as amended, and became effective December 26, 1962. See Exhibit 13 for territory involved. Prior to such detachment, plaintiff school district had obtained appraisals on and had negotiation with the owners of a part of such area, intending purchase thereof for a school site.

11. The legal descriptions of the 4 areas are found in Exhibit D attached to the complaint.

12. December 31, 1962, by the annexation of the so-called Breton Avenue area, the Kendall area, the Fuller-

44th Street area and the Alger area (December 26, 1962) to the City of Grand Rapids, under the home rule act, those areas became a part of plaintiff school district, by virtue of said § 143 of the school code of 1955, as amended (CL 1948, § 340.143; MSA § 15.3143).

13. By virtue of the operation of said § 143 of the school code of 1955 the individual plaintiffs and the individual intervening plaintiffs became electors of the City of Grand Rapids and school electors of plaintiff school district.

14. January 1, 1963, the board of education of defendant Kentwood Public Schools unanimously adopted resolutions requesting defendant the Board of Education of the County of Kent to detach the Breton Avenue, Kendall, Fuller-44th Street and Alger Street areas from plaintiff The Board of Education of the City of Grand Rapids and attach the areas to defendant Kentwood Public Schools, pursuant to the provisions of chapter 5, part 2 of the school code of 1955, as amended, being the chapter of the school code providing for the transfer of territory between school districts (CL 1948, § 340.461, et seq; MSA § 15.3461, et seq). See Exhibit D attached to the complaint.

The individual plaintiffs and intervening individual plaintiffs, residents of the areas affected and/or taxpayers, were not consulted concerning their wishes or desires on this proposed detachment. Neither were the school electors of defendant Kentwood Public Schools consulted concerning their wishes or desires when the Alger area was annexed by joint resolution. The other three areas were annexed by petition and popular vote of the electors of Paris Township and Grand Rapids, under the home rule act. Kentwood School electors residing outside Paris Township boundaries had no right to vote on the question and were not consulted as to their wishes or desires. See Exhibits 7, 8 and 9 for tabulation of votes.

15. Defendant the Board of Education of the County of Kent accepted the transfer petitions, and after posting and publishing notice as required by § 462 of the school code of 1955 (CL 1948, § 340.462; MSA § 15.3462) held meetings January 29, 30, 31, February 5 and 6, 1963, at which meetings plaintiff The Board of Education of the City

of Grand Rapids, defendant Kentwood Public Schools and defendant the Board of Education of the County of Kent were represented by counsel, sworn testimony was taken for and against such transfers, cross-examination of witnesses was allowed and all proceedings were taken stenographically by a court reporter, the transcript of which proceedings was introduced, received and marked Exhibit 1 at the hearing held before this Court March 1, 1963. At the final meeting held by defendant the Board of Education of the County of Kent February 6, 1963, the president announced the intention of the board to render a decision on February 25, 1963. The individual plaintiffs, intervening individual plaintiffs or other resident taxpayers of such 4 areas were not personally served with notice of such meetings.

(a) At the opening of the meeting held January 29, 1963, plaintiff moved dismissal of the proceedings by defendant the Board of Education of the County of Kent on the grounds that the statute (CL 1948, §§ 340.461 to 340.467; MSA §§ 15.3461 to 15.3467) failed to guarantee due process of law and the equal protection of the laws; that the notice requirements were inadequate and violated the federal constitution and that defendant the Board of Education of the County of Kent was unconstitutionally constituted in that it is an unrepresentative body and was elected contrary to the requirements of the equal protection clause of the federal constitution. This motion was denied by defendant the Board of Education of the County of Kent. See Exhibit 1 introduced and received in evidence at the hearing before this Court March 1, 1963.

(b) At the time of the meetings mentioned above, one member of defendant the Board of Education of the County of Kent, Mary Keeler, was a member of plaintiff The Board of Education of the City of Grand Rapids and a resident of the City of Grand Rapids. At the opening of the meeting held January 29, 1963, counsel for defendant Kentwood Public Schools requested that member Mary Keeler excuse herself from participating in the meetings on the ground that she was a member of plaintiff The Board of Education of the City of Grand Rapids, which was a party to the proceedings. This she refused to do,

unless the other members so requested. The other members requested that she sit (see Exhibit 1 introduced and received in evidence at the hearing before this Court March 1, 1963).

16. February 15, 1963, plaintiffs filed the complaint herein with the Honorable W. Wallace Kent, United States District Judge, who on that date entered an order restraining defendant the Board of Education of the County of Kent, the individual members of said board, their agents, servants, employees and attorneys, from assuming jurisdiction and authority on the question of detaching the areas described in Exhibit D attached to the complaint from The School District of the City of Grand Rapids and attaching the same to defendant Kentwood Public Schools; from conducting any further hearings in connection with the same and from rendering a decision or making any order in connection with the transfer petition filed by defendant Kentwood Public Schools and pending before defendant the Board of Education of the County of Kent.

17. On motion of defendant Kentwood Public Schools, the Honorable W. Wallace Kent revoked and set aside the temporary restraining order February 25, 1963, at 3:45 o'clock p.m. See Exhibit 14.

18. The evening of February 25, 1963, defendant the Board of Education of the County of Kent adopted the resolution of transfer, which is Exhibit H attached to paragraph 13 of the complaint as added by amendment filed February 27, 1963, and which is attached hereto as Exhibit 15. No reasons, conclusions, or findings of fact, either orally or in writing, were rendered.

(a) At the hearing before this Court March 1, 1963, the motion of the Attorney General of the State of Michigan to intervene as a party defendant was granted.

19. Defendant Russell Emmons, a member of defendant the Board of Education of the County of Kent, participated fully in the deliberations, made a second to the motion to transfer and voted for the transfer. At the same time, his school district (Grandville) had a like petition pending before the county board to transfer property from plaintiff school district to the Grandville School District.

Member Mary Keeler voted against the transfer resolution.

20. A county board of education is composed of 5 members elected under the provisions of § 294 of the school code of 1955, as amended (CL 1948, §340.294; MSA § 15.3294 — see also § 292 of the school code of 1955; CL 1948, § 340.292; MSA § 15.3292).

Said § 294 of the school code of 1955 was repealed by said Act No. 190 PA 1962, which became effective March 28, 1963 and §§ 294a through 294h were added. While in effect the former method of election was retained (see § 294a), §§ 294b through 294h provided for the popular election of board members on referendum either by action of the intermediate board (§ 294c) or on petition of a majority of the boards of education within that intermediate school district representing more than 50% of the children on the last school census in the county district.

Sections 294c through 294h, as added by said Act No. 190 PA 1962, were amended by Act No. 290 PA 1964, effective August 28, 1964. The 1964 amendment to § 294c clarified the method of calling a referendum for the popular election of members of boards of education of intermediate school districts by the following language:

> "The board shall submit the question upon receipt of resolutions adopted by a majority of the boards of education of constituent school districts and representing more than 50% of the children on the last school census in the intermediate district."

(a) The individual defendants, as members of defendant the Board of Education of the County of Kent, who received the transfer petition of defendant Kentwood Public Schools and acted thereon, were residents of and were elected for terms set forth as follows:

Victor Weller (6 yrs., 1963)	Rockford (Algoma No. 1 Fractional)
C. B. Leaver (6 yrs., 1959)	Kent City (Tyrone No. 4 Fractional)
Dewey Jaarsma (6 yrs., 1961)	Byron (Byron No. 1 Fractional)

Russell Emmons (6 yrs., 1963)	Grandville (Wyoming No. 1 Fractional)
Mary Keeler (2 yrs., 1963)	Grand Rapids (Grand Rapids No. 1)

In 1962 Mary Keeler was elected by the remaining members of the board to fill a vacancy until the 1963 election, as authorized by both §§ 294 and 294a.

(b) Of the 5 elected members of defendant the Board of Education of the County of Kent, plaintiff school district had but one, namely, Mary Keeler, and under the provisions of both §§ 294 and 294a would not be entitled to more than 2, although plaintiff school district had and has a population in excess of all other school districts in Kent County combined.

Under the referendum provision of § 294c of said Act No. 190 PA 1962, as amended by Act No. 290 PA 1964, plaintiff school district with a majority of the population of Kent County could not, acting alone, compel such referendum.

21. Section 294 of the school code of 1955, which prescribed the method of electing members of county boards of education provided in substance that the county superintendent of schools of each county school district, by reasonable notice sent by registered mail, call a meeting of the secretaries of boards of primary and fourth class school districts and the presidents of boards in other school districts, within the jurisdiction of the county school district, at which meeting members of the county board of education were elected by a majority vote of those present. The board of any of the school districts could by resolution designate any other member of the board to represent it at such meeting. The members of the county board of education served a term of 6 years and elections were held biennially, which meant that biennially either 2 members or 1 member were elected depending upon the number of offices expiring. Terms commenced July 1.

Section 294a under the new act, retained the substance of former § 294 with reference to such elections. Section 294a substituted notice by certified mail rather than registered mail. Section 294 provided that if a vacancy was

not filled within 30 days by the majority of the remaining members, the vacancy would be filled by the county board of supervisors. Section 294a substituted the state board of education. Section 294 provided that not more than 2 members of the county board of education could be elected from any one township or city. Section 294a provides that not more than 2 members of the board shall be from the same school district unless there are fewer districts than there are positions to be filled.

September 29, 1961, there were 56 primary, fourth class and third class and one second class district (plaintiff school district) within Kent County. Through consolidations and annexations the total number of school districts within Kent County was reduced in 1964 to 39. The total population of Kent County as of the 1960 federal decennial census was 363,187. The population of plaintiff school district as of the same census, as adjusted for annexations, was 201,777 or 55.6% of the total.

(a) Ashley School District in Kent County and under the jurisdiction of defendant the County Board of Education of Kent County had a population of 145 and 1 vote. Boyd School District had a population of 191 and 1 vote; Dodge School District had a population of 117 and 1 vote; Hoag School District had a population of 111 and 1 vote; Nelson Center School District had a population of 99 and 1 vote. The School District of the City of Grand Rapids had a population of 201,777 and 1 vote. For population variance ratios see Exhibit 16.

(b) Kent County had a total 1963 state equalized valuation of $1,165,923,800, of which valuation plaintiff school district had $636,758,000 or 54.6%. Kent County had a total 1964 state equalized valuation of $1,193,579,600, of which valuation plaintiff school district had $615,235,596 or 51.5%. See Exhibit 17.

(c) Kent County had a total 1963 school census (0-19) of 157,915, of which plaintiff school district had 75,863 or 48.04%. Kent County had a total 1964 school census of 160,638 of which plaintiff school district had 76,395 or 47.6%. See Exhibit 18.

(d) During the last two years, a majority of the school districts in Kent County with the smallest school

census has averaged less than 2% of the total school census of Kent County. See Exhibit 19.

22. March 1, 1963, this Court held a hearing on the motions of the defendants to dismiss the complaint and other pending motions, after which it entered the order of March 4, 1963.

In substance the order of March 4, 1963, denied the motion of plaintiffs to reinstate the restraining order vacated by the Honorable W. Wallace Kent, entered February 25, 1963, and likewise denied plaintiffs' application for an interlocutory injunction at that time. Defendants' motion to dismiss the complaint was held in abeyance and the Court retained jurisdiction "awaiting the plaintiffs' exercise of their administrative remedies provided by the Michigan statutes, and, if they so choose, their application to the Supreme Court of Michigan for a writ of certiorari to review the action of the State Board of Education."

23. Pursuant to § 467 of the school code of 1955, as amended (CL 1948, § 340.467; MSA § 15.3467) plaintiffs appealed the order of transfer entered February 25, 1963, by defendant the Board of Education of the County of Kent to the State Board of Education. The State Board of Education, which is not a party to this suit, was constituted by § 6, article XI of the 1908 Constitution of the State of Michigan, the 4 members of which were elected at large by the people of the State of Michigan.

24. The State Board of Education, after notice to plaintiffs as appellants and defendants as appellees and having taken testimony of all persons called as witnesses by the parties and the arguments of the attorneys, entered the amended order June 5, 1963 (which is Exhibit C attached to the complaint as amended March 9, 1964) without reasons, conclusions or findings of fact. No oral or written opinion was given. See Exhibit 20. The amended order of the State Board of Education, entered June 5, 1963, set aside the action of defendant the Board of Education of the County of Kent taken February 25, 1963, and ordered that the territory involved be transferred from the school district of The City of Grand Rapids to Kentwood Public Schools, except for the property owned and occupied by the individual plaintiffs, James Sailors and Loretta Sailors, his wife, Seymour Koning and Mildred Koning, his wife,

and Grazzi Mullay and Rosalie Mullay, his wife, and 2 other lots owned by Louise M. Scalice and Dorothy Biermacker. See Exhibits 21 and 22. The transfer included property owned by the intervening plaintiffs and on which they reside.

The only explanation given to this Court for the exemption of the individual plaintiffs from the amended order of the State Board of Education, entered June 5, 1963, was that their wish to be in plaintiff school district was granted. See statement of Assistant Attorney General Eugene Krasicky attached as Exhibit 23.

25. The territory tranferred by order of the State Board of Education had a 1964 state equalized valuation of $5,369,584. The 1964 tax levy by defendant Kentwood Public Schools against such territory for all school purposes totalled $124,554.35 or a tax rate of 23.2 mills on state equalized value. The 1964 levy by plaintiff school district against such territory totalled $84,839.43 or a tax rate of 15.8 mills. The Alexander Hamilton school building is located within the area transferred to defendant Kentwood Public Schools. By stipulation filed in this cause, dated September 10, 1964, if the transfers are voided, the operating taxes for 1964 which were collected by defendant Kentwood Public Schools will be turned over to plaintiff school district and the levy made by defendant Kentwood Public Schools in 1964 for debt retirement for the 1964 bond issue will be returned to the taxpayers in the 4 areas. See the stipulation with reference to the collection and remittance of 1964 school taxes dated and filed herein September 10, 1964.

26. September 3, 1963, William A. Duthler, Anna M. Duthler, Harvey A. Duthler and Edna M. Duthler, who were, prior to December 31, 1962, resident-electors and freeholders of Paris Township, Kent County, Michigan and were school electors of defendant Kentwood Public Schools, but are now resident-electors and freeholders of the City of Grand Rapids, while school electors of defendant Kentwood Public Schools, filed a motion to intervene as parties plaintiff, which motion was granted by order of this Court entered June 4, 1964.

The intervening individual plaintiffs were not consulted concerning their wishes or desires on the transfer and had no right to vote thereon. Neither were the school electors

of defendant Kentwood Public Schools consulted concerning their wishes or desires on the annexation of the Alger area. The other three areas were annexed by petition and popular vote of the electors of Paris Township and Grand Rapids. Kentwood voters outside Paris Township boundaries had no right under the home rule act to vote and were not consulted as to their wishes or desires. See Exhibits 7, 8 and 9 for tabulation of votes.

27. Plaintiffs did not make application to the Supreme Court of Michigan for leave to appeal the amended order of the State Board of Education entered June 5, 1963, and the order of the State Board of Education has become final.

28. Frank J. Kelley, Attorney General of the State of Michigan, intervening defendant herein, requested Lynn M. Bartlett, Michigan State Superintendent of Public Instruction, to conduct a survey of all of the intermediate school districts to ascertain for the past ten years the number of transfers granted, transfers modified and transfers denied for each intermediate school district. Information was also requested showing intermediate school district budgets for 1964, whether the intermediate school district is conducting a special education program and the number of tax mills voted for special education. Responses were received from the intermediate school superintendents between June 15, 1964 and July 15, 1964 and the results of the survey are attached hereto, showing the information for each intermediate school district. In addition, appended hereto is a map showing the intermediate school districts, including those that had been annexed and consolidated, and a tabulation of total of transfers granted, transfers modified, and transfers denied with an average of such requests for 10 years.

The survey of intermediate school districts is attached hereto as Exhibit 24, consisting of 12 pages, the map of the intermediate school districts is attached as Exhibit 25, consisting of 1 page, and the table of the summary of transfers granted, etc. is attached hereto as Exhibit 26, consisting of 2 pages.

29. Since February 25, 1963, when the ex parte temporary restraining order issued in this cause was dissolved (Exhibit 14) and defendant the Board of Education

of the County of Kent ordered the transfer of the 4 areas (Exhibit 15), defendant the Board of Education of the County of Kent has exercised the powers and performed the duties granted and imposed on it by said § 297 of the school code of 1955, as amended (Exhibit 1) and since March 28, 1963, said defendant, now known as the Board of Education of the Kent Intermediate School District, has exercised the powers and performed the duties granted and imposed on it by § 298a of the school code of 1955, as added by Act No. 190 PA 1962 (Exhibit 3).

In addition to exercising such powers and performing such duties, said defendant has entered 35 orders transferring certain territory between school districts within its jurisdiction, under the provisions of chapter 5, part 2 of the school code of 1955, as amended (CL 1948, § 340.461, et seq; MSA § 15.3461). See Exhibit 27.

30. March 16, 1963, territory with a 1964 state equalized valuation of $14,659,195, was transferred by order of defendant the Board of Education of the County of Kent from plaintiff school district to Godwin Heights Public Schools. See item 63-4 on Exhibit 27.

May 17, 1963, territory, with a 1964 state equalized valuation of $727,399, was transferred by order of defendant the Board of Education of the County of Kent from plaintiff school district to Grandville Public Schools. See item 63-9 on Exhibit 27.

The territory so transferred was uninhabited and had been previously annexed to the City of Grand Rapids under the home rule act and became part of plaintiff school district under said § 143 of the school code of 1955.

Both transfers were appealed by plaintiff school district and others to the State Board of Education, which confirmed said transfer by order entered June 5, 1963, on the Godwin transfer and by order entered August 13, 1963, on the Grandville transfer. Plaintiff school district and others made applications on both transfers to the Supreme Court of Michigan for leave to appeal the orders of the State Board of Education, asserting substantially the same constitutional questions asserted in the case at bar. Briefs were filed in each case in the Supreme Court of Michigan by the appellants and appellees and the Supreme Court of Michigan denied leave to appeal, by

order entered November 6, 1963, in the Godwin case and by order entered February 26, 1964, in the Grandville case. Appeal to the Supreme Court of the United States was not taken in either case. See supplemental motion of defendant Kentwood Public Schools to dismiss the complaint dated and filed herein March 2, 1964.

February 15, 1965, defendant the Board of Education of Kent Intermediate School District transferred territory with a 1964 state equalized valuation of $46,200 from Godwin Heights Public Schools to plaintiff school district. See item 65-1 on Exhibit 27.

Including the transfers to defendant Kentwood Public Schools the net 1964 state equalized valuation of territory detached from plaintiff school district totalled $20,709,978. With 20 public school children in membership in 1963, in said territory so detached, the 1964 state equalized valuation per membership child was $1,035,499.

31. The Alexander Hamilton School, located within the transferred area, see Exhibit 21, is .7 miles distance from the residence of plaintiffs Sailors and Koning and 2.2 miles distance from plaintiffs Mullay. The nearest Grand Rapids school to the residences of Sailors and Koning, at the time of transfer, was Shawnee Park School which was 2.7 miles distance. The nearest Grand Rapids school to the residence of the Mullays, at the time of transfer, was the Alger School which was 2.7 miles distance. Since the transfer a new elementary school has been opened which is 2.1 miles distance from the residence of Sailors and Koning and 1.5 miles distance from the residence of the Mullays.

Dated: April 30, 1965.

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EXHIBIT 1

Powers and duties of the county board of education under the provisions of § 297 of the school code of 1955, as amended (CL 1948, § 340.297; MSA § 15.3297).

SEC. 297. The powers and duties of the county board of education shall be as follows:

(a) To receive from the county treasurer such reports of delinquent taxes due school districts as this official is required by law to file with township and city clerks and to compute from such report the amount of delinquent school taxes due each school district in the county. The county treasurer of each county shall, at the time of making monthly settlements with the several township and city treasurers of the county, file with the secretary of the county board of education a statement of all delinquent school taxes which are included in the amounts sent by the county treasurer to the several township and city treasurers of the county, together with the descriptions upon which these delinquent school taxes shall have been paid. The county board of education shall, upon receipt of such statements, compute the amount of delinquent school taxes and interest thereon included in such statement that shall be due each school district of the county and shall, within 30 days from receiving the statement from the county treasurer, give notice to the secretary of each school board of the county of the amount of delinquent school taxes and interest thereon that belongs to his district and which was included in the amount sent by the county treasurer to the treasurer of the township or city in which his district is located.

(b) To recommend the purchase of library books for all school libraries and of all instructional equipment in school districts not employing a superintendent of schools.

(c) To employ a county superintendent of schools and such assistants, including in its discretion a deputy, as it shall deem necessary for the best interest of the county and to fix the compensation for the same except as otherwise provided in section 300 of this act. That part of the compensation of the county superintendent of schools as

is paid from county funds and the compensation of the deputy and assistants which shall include salaries and traveling expenses incurred in the discharge of their official duties and the necessary and contingent expenses of the office of the county board of education and the county superintendent of schools for printing, postage, stationery, record books, equipment, office and telephone rental, rent of rooms for teachers' or school officers' meetings, pupils' mental and achievement tests, expenses incurred in the health and social service program of the office, and elections conducted by the county board of education, shall be paid by the county treasurer after the same have been authorized by the county board of education from such amounts as may be appropriated therefor by the county board of supervisors. The county board of education shall employ and contract with for a term of not to exceed 4 years a county superintendent of schools who shall have the qualifications and perform the duties as provided in this act. On or before the close of each term, or sooner if there should be a vacancy, the superintendent's successor shall be employed as herein provided.

(d) Each county board of education shall make or cause to be made a map of the county, showing by distinct lines thereon the boundaries of each school district and parts of school districts therein, if such school districts exist, and shall number the same thereon as established by proper authority. One copy of such map shall be filed in the office of the county superintendent of schools, 1 copy shall be filed with the supervisors of the respective townships, and 1 copy shall be filed in the office of the superintendent of public instruction. If any division or alteration is at any time made in the boundary lines of any district the county board of education shall within 1 month thereafter, file a new map and copies thereof as aforesaid showing such changes.

(e) The county board of education shall cause to be taken an annual school census by the agency and in the manner provided in chapter 30, part 2 of this act, in each and every school district within the provisions of this act.

(f) The county board of education shall make out an annual budget showing the total amount required to carry on the lawful activities of the county board of education, which amount shall be assessed and collected at the same time and in the same manner as other county taxes are assessed and collected and paid out by the proper authorities of said county upon the direction of the county board of education.

(g) The county board of education shall be empowered to furnish services on a consultant or supervisory basis to any school district employing a superintendent of schools upon request of the board of education of that district.

(h) The county board of education shall be empowered to employ teachers meeting the qualifications as set up by the state board of education and the superintendent of public instruction for serving speech defective children, hard of hearing children who need lip reading training, and homebound children of normal mentality: Provided, That no school district other than the county district is able or is willing to provide such services; And provided further, That such programs are previously approved by the superintendent of public instruction. Such programs when approved may be reimbursed in accordance with the provisions of chapter 17 of part 2 of this act.

(i) The county board of education shall be empowered to direct, supervise and conduct cooperative educational programs within the county in behalf of school districts which request such services from the county board of education. The county board of education is empowered to utilize any available funds, appropriated by the county board of supervisors for that purpose or allocated by boards of education of the cooperating school districts, and to accept contributions from other sources, for the purpose of financing the programs. Such funds shall be deposited with the county treasurer through the county superintendent of schools in a special fund and shall be disbursed as the county board of education shall direct. Notwithstanding any other provision of law, the county board of supervisors is hereby authorized to appropriate, and the boards of education of the various school districts are hereby authorized to allocate, available funds not otherwise obligated by law, for such educational programs. The county

board of education shall have power to employ teachers and take any other action necessary to direct, supervise and conduct such educational programs.

EXHIBIT 3

Powers and duties of the board of education of the intermediate school district under the provisions of § 298a of the school code of 1955, as added by Act No. 190 PA 1962, effective March 28, 1963 (CL 1948, § 340.298a; MSA 15.3298 (1)).

SEC. 298a. (1) The board shall:

(a) Perform such duties as required by law and by the superintendent of public instruction, but shall not supersede nor replace the board of education of any constituent school district, nor shall it control or otherwise interfere with the rights of constituent districts except as provided in this chapter.

(b) Employ a superintendent and such assistants, including, in its discretion, a deputy, as it deems necessary for the best interest of the district and fix the compensation for the same. The compensation of the superintendent and his deputy and assistants, which shall include salaries and travel expenses incurred in the discharge of their official duties and the necessary contingent expenses of the office of the board and the superintendent for printing, postage, stationery, record books, equipment, office and telephone rental, rental of rooms for teachers' or school officers' meetings, pupils' mental and achievement tests, expenses incurred in the health and social service program of the office, elections conducted by the board, expenses incurred by the board in the legal performance of its duties, expenses incurred for heat, light, electricity, insurance, buildings and grounds maintenance, per diem of board members, and their expenses incurred in traveling in the discharge of their official duties, reference books, professional journals, instructional supplies and equip-

ment, legal fees, janitorial supplies and equipment, shall be paid by the treasurer, after the same have been authorized by the board, from such amounts as have been levied and collected therefor by the county board of supervisors and from any other available funds. The board shall employ and contract for a term of not to exceed 4 years, a superintendent who shall have the qualifications and perform the duties as provided in this chapter. On or before the close of each term, or sooner if there is a vacancy, the superintendent's successor shall be employed as herein provided.

(c) Prepare an annual general budget which shall be in the same form as that provided for other school districts. On or before March 1 of each year the board shall submit such budget to a meeting of 1 school board member named from each constituent school district to represent such a district. At such meeting the president of the intermediate district board shall preside, the secretary shall keep the minutes and the representatives of constituent district boards shall by majority vote determine the maximum amount of the intermediate district general budget but shall not make final determinations as to line items in such a budget. Following such meeting the intermediate district board shall file its budget, the maximum amount of which shall not exceed that approved by the school board representative of constituent districts, with the county clerks of the counties in which it has territory. Each county clerk receiving the budget shall deliver it to the tax allocation board in the same manner as other school district budgets are handled.

The tax allocation board shall receive the budgets from its county clerk, shall treat them as other school district budgets are treated and shall allocate tax rates to intermediate school districts for the purposes set forth in this act. When the intermediate district board has received an allocation on the basis of its budget, it shall certify for collection to the city and township officials concerned a statement of the amount of taxes to be levied, which certification shall be made at the same time and in the same

manner as that of other school districts. The rate certified for levy shall not exceed the amount allocated.

On receipt of the statement from such board, the city and township officials responsible for the levying and collection of taxes shall spread on the tax roll an intermediate school district tax equal to the amount ordered spread, and shall collect such taxes in the same manner as other taxes are collected.

Taxes collected under the provisions of this chapter shall be paid over to the county treasurer in the same manner as other county taxes are paid over, and similar accounts and records shall be kept. The county treasurer shall pay over all funds received under this act to the treasurer of the board. County treasurers of counties in which fractions of the intermediate school districts operating under this act are situated shall pay over those funds collected under the act to the treasurer of the board.

Intermediate school district taxes shall be assessed, levied and collected as provided in Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 to 211.157 of the Compiled Laws of 1948. Budgets shall be submitted and intermediate school districts shall be governed by the provisions of Act No. 62 of the Public Acts of 1933, as amended, being sections 211.201 to 211.217 of the Compiled Laws of 1948.

(d) Receive from the county treasurer such reports of delinquent taxes due school districts as he is required by law to file with township and city clerks and compute from such report the amount of delinquent school taxes due each school district in the county. The county treasurer of each county, at the time of making monthly settlements with the several township and city treasurers of the county, shall file with the secretary of the board a statement of all delinquent school taxes which are included in the amounts sent by the county treasurer to the several township and city treasurers of the county, together with the descriptions upon which the delinquent school taxes have been paid. The board, upon receipt of such statements, shall compute the amount of delinquent school taxes and interest thereon included in the statement which are due each school district of the county and, within 30 days from receiving the statement from the county treasurer, shall

give notice to the secretary of the board of education of each school district of the amount of delinquent school tax and interest thereon that belongs to his district and which was included in the amount sent by the county treasurer to the treasurer of the township or city in which his district is located.

(e) Prepare a map of the intermediate district annually as of July 1, showing by distinct lines thereon the boundaries of each constituent school district. One copy of such map shall be filed in the office of the superintendent, 1 copy shall be filed with each of the supervisors of the respective townships, and 1 copy shall be filed in the office of the superintendent of public instruction, and 1 copy shall be filed in the office of the secretary of state.

(f) Cause an annual school census to be taken by the agency and in the manner provided in sections 941 to 948 of this act, in each and every school district within the provision of this chapter.

(g) Furnish services on a consultant or supervisory basis to any constituent school district upon request of that district.

(h) Employ teachers meeting the qualifications as set up by the state board of education and the superintendent of public instruction for serving speech defective children, hard of hearing children who need lip reading training, mentally retarded, physically handicapped, emotionally distressed, homebound children of normal mentality and any other atypical children if the programs are previously approved by the superintendent of public instruction, and if no school district other than the intermediate district is able and willing to provide such services. The district, when the pregrams have been approved by the superintendent of public instruction, may be reimbursed in accordance with the provisions of sections 771 to 780 of this act.

(i) Direct, supervise and conduct cooperative educational programs in behalf of the constituent school districts which request such services. The board may utilize any available funds not otherwise obligated by law, and accept contributions from other sources, for the purpose of

financing the programs. The funds shall be deposited with the treasurer in a special fund and shall be disbursed as the board of education shall direct. Notwithstanding any other provision of law, the board of supervisors may appropriate, and the boards of education of the constituent school districts may allocate available funds not otherwise obligated by law, for such educational programs. The board may employ teachers and take any other action necessary to direct, supervise and conduct such educational programs.

(j) Conduct cooperative programs mutually agreed upon on by the boards of not more than 3 intermediate school districts.

(k) When directed by the board of supervisors, establish, if the board deems necessary, a school for those persons of school age who are housed in children's homes operated by the juvenile court or who are living at home but assigned to such school by a juvenile court. The board of education may lease or purchase sites for such schools, build, lease or rent housing facilities for such schools, may employ such teaching and supervisory staff as is necessary to operate such schools, is authorized to make rules and regulations covering the operation of such schools, may exclude students for reason of persistent misbehavior, or bodily conditions and habits disturbing to the orderly conduct of the school, is authorized to classify and promote students for instructional purposes, and otherwise do all those things necessary to the proper conduct of such a school.

(2) Any member of the board may administer oaths for the qualifying of board members and oaths required in any other transaction connected with, or related to, the educational program of the intermediate school district.

APPENDIX B

(Filed August 11, 1965)

United States District Court
For The Western District Of Michigan
Southern Division

JAMES SAILORS, et al,
Plaintiffs,

vs. Civil Action No. 4480

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, et al,
Defendants.

ISSUES OF LAW AGREED TO BY DEFENDANTS

The defendants agree to the following statement of issues of law.

ISSUES OF LAW

1. Does this Court have jurisdiction to invalidate an act of an allegedly malapportioned county (intermediate) board of education?
2. Is the composition of local units of government, such as county (intermediate) school boards of education, a state matter and not a subject within the jurisdiction of this Court?
3. Do school electors have an absolute right to vote for members of a county (intermediate) school board of education?
4. Does this Court have jurisdiction to consider the alleged malapportionment of a county (intermediate) school board of education upon the complaint of individual school electors and resident freeholders if such individuals do not have the absolute right to vote for members thereof?

5. Do the individual school electors and resident freeholders have any property rights in the territory of a school district?

6. Does this Court have jurisdiction to consider an alleged violation of due process of law upon the complaint of individual school electors and resident freeholders in the alteration of the boundaries of school districts?

7. Are Title 42, § 1981 and § 1983 U.S.C. violated as alleged by plaintiffs?

8. Do plaintiffs The Board of Education of the City of Grand Rapids, a school district created under the Constitution and laws of the State of Michigan, and the City of Grand Rapids, created as a home rule city, under the Constitution and laws of the State of Michigan, have any rights, privileges or immunities which they may invoke in opposition to the will of their creator?

9. Do the individual plaintiffs, whether intervening or not, have standing to invoke the Fourteenth Amendment to the Constitution of the United States?

10. Does chapter 5, part 2 of the school code of 1955 (the transfer chapter) violate, in any respect, the Fourteenth Amendment to the Constitution of the United States?

11. Does this Court have jurisdiction over the Michigan State Board of Education, created pursuant to the 1908 and 1963 Michigan Constitutions?

12. If this Court has jurisdiction over the Michigan State Board of Education, do plaintiffs, whether intervening or not, have any rights, privileges or immunities guaranteed by the Fourteenth Amendment to the Constitution of the United States, in proceedings before that Board to alter boundaries of school districts?

13. If this Court has jurisdiction over the Michigan State Board of Education and if plaintiffs (whether intervening or not) have rights, privileges or immunities guaranteed by the Fourteenth Amendment to the Constitution of the United States, in proceedings before that Board to alter boundaries of school districts, were any of such rights, privileges or immunities violated by the action of the Michigan State Board of Education by its amended order entered June 5, 1963?

14. If this Court has jurisdiction of the subject matter to consider the alleged malapportionment of defendant Kent County (intermediate) Board of Education, were the members of the board de facto officers and is the action taken by them as such board on February 25, 1963 the action of a de facto public body and valid in all respects?

Dated: August 10, 1965.

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APPENDIX C

MICHIGAN CONSTITUTIONAL PROVISIONS RELATING TO EDUCATION

1908 Michigan Constitution, Article XI, Education

Encouragement of education. Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

* * *

State board of education; election; powers and duties. Sec. 6. The state board of education shall consist of four members. On the first Monday in April, nineteen hundred nine, and at each succeeding biennial spring election, there shall be elected one member of such board who shall hold his office for six years from the first day of July following his election. The state board of education shall have general supervision of the state normal college and the state normal schools, and the duties of said board shall be prescribed by law.

* * *

Primary school system. Sec. 9. The legislature shall continue a system of primary schools, whereby every school district in the state shall provide for the education of its pupils without charge for tuition; and all instruction in such schools shall be conducted in the English language. If any school district shall neglect to maintain a school within its borders as prescribed by law for at least five months in each year, or to provide for the education of its pupils in another district or districts for an equal period, it shall be deprived for the ensuing year of its proportion of the primary school interest fund. If any school district shall, on the second Monday in July of any year, have on hand a sufficient amount of money in the primary school interest fund to pay its teachers for the next ensuing two years as determined from the pay roll of said district for the last school year, and in case of a primary district, all tuition for the next ensuing two years, based upon the then enrollment in the seventh and eighth grades in said school

district, the children in said district shall not be counted in making the next apportionment of primary school money by the superintendent of public instruction; nor shall such children be counted in making such apportionment until the amount of money in the primary school interest fund in said district shall be insufficient to pay teachers' wages or tuition as herein set forth for the next ensuing two years.

• • •

1963 Michigan Constitution, Article VIII, Education.

Encouragement of education. Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Free public elementary and secondary schools; discrimination. Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

Convention comment.

This is a revision of Sec. 9, Article XI, of the present (1908) constitution which fixes responsibility on the legislature to provide "primary" education. To conform to present practice and court interpretations, "primary" is changed to "elementary and secondary." The balance of the section is excluded because its restrictions as to finance and definitions as to basic qualifications needed to be eligible for state aid are better left to legislative determination.

The anti-discrimination clause is placed in this section as a declaration which leaves no doubt as to where Michigan stands on this question.

Note: The convention comment above is quoted from Volume 1, Michigan Statutes Annotated, 1965 Revised Volume at page 615.

APPENDIX D

EXTRACTS FROM MICHIGAN STATUTORY PROVISIONS WITH REFERENCE TO THE TRANSFER OF TERRITORY BETWEEN SCHOOL DISTRICTS

Section 461 of The School Code of 1955 as amended; 1948 Michigan Compiled Laws, § 340.461; Michigan Statutes Annotated, § 15.3461

Transfer of territory between districts; resolution or petition, period for final action; approval by electors. Sec. 461. The county board of education may, in its discretion, detach territory from 1 district and attach it to another when requested to do so by resolution of the board of any district whose boundaries would be changed by such action, or when petitioned by not less than ⅔ of the resident owners of the land to be transferred. Only territory contiguous to a district may be transferred. Whenever the latest available taxable valuation of the area to be detached is more than 10% of the latest available taxable valuation of the entire school district from which it is to be detached, the action of the county board of education directing such detachment shall not be valid unless approved, at an annual or special election called for that purpose in the district from which the detachment is to be made, by an affirmative vote of a majority of the school tax electors of the district, voting thereon.

Section 462 of The School Code of 1955; 1948 Michigan Compiled Laws, § 340.462; Michigan Statutes Annotated, § 15.3462

Same; notice of meeting and of proposed alteration of boundaries. Sec. 462. The county superintendent of schools shall give at least 10 days' notice of the time and place of the meeting of the county board of education and of the proposed alteration in school district boundaries to be considered at said meeting, by posting such notice in at least 5 public places in each of the districts whose territory may be affected by such alteration and by publication

at least once prior to such meeting in a newspaper of general circulation in the territory of the affected districts.

* * *

Section 467 of The School Code of 1955, as amended; 1948 Compiled Laws of Michigan, § 340.467; Michigan Statutes Annotated, § 15.3467

Same; appeal to state board of education. Sec. 467. Any one or more resident owners of land considered for transfer from 1 district to another, or the board of any district whose territory is affected, may appeal the action of the county board of education or joint boards in transferring such land, or the failure to transfer such land, or the action taken relative to the accounting determination, to the state board of education within 10 days after such action or determination by the county board of education or the joint boards. If the county board of education or the joint boards fail to take action within the time limit prescribed in section 461, the appeal may be made to the state board of education within 10 days following the termination of the period. Such appeal shall have the effect of holding the effectiveness of the resolution from which appealed in abeyance until the appeal is acted upon by the state board of education.

The state board of education is hereby empowered to consider such appeals and to confirm, modify or set aside the order of the county board of education or the joint boards and its action on any such appeal shall be final.

APPENDIX E

THE QUALIFICATIONS OF SCHOOL ELECTORS

Chapter 4, part 2, of The School Code of 1955, as last amended by Act No. 257 of the Public Acts of 1951, with reference to school elections and the qualifications of school electors under the 1908 Constitution, provided as follows:

School electors; qualifications. Section 1. A school elector shall possess the qualifications provided for qualified electors in section 1, article 3 of the constitution (1908): Provided, That upon questions involving the direct expenditure of public moneys or the issue of bonds, school electors shall possess the qualifications provided in section 4 of article 3 of the constitution: Provided further, That no person shall vote in any school election unless he shall have resided within the school district at least 30 days next preceding said election. (C. L. '48, § 354.1; C. L. '29, § 7410.)

Chapter 7, part 2, of The School Code of 1955, as amended, with reference to school elections and the qualifications of school electors under the 1963 Constitution, provides as follows:

School electors, qualifications; repeat elections on proposals. (M.S.A. 15.3511)

Sec. 511. A school elector shall possess the qualifications provided for qualified electors in section 1 of article 2 of the constitution (1963) and statutes enacted thereunder. Upon questions involving the increase of the ad valorem tax limitation imposed by section 6 or article 9 of the constitution for a period of more than 5 years or the issue of bonds, school electors shall possess the qualifications provided in section 6 of article 2 of the constitution. No person shall vote in any school election unless he shall have resided within the school district at least 30 days next preceding the election. The same question or measure involving consolidation of school districts, annexation of entire districts, annexation or transfer of a portion of 1 school district to another, or bonding of school districts,

shall not be submitted to the voters of any school district more often than once in 6 months, unless the board is presented with a petition requesting the board to call another election and signed by qualified school electors of the district to the number of not less than 50% of the registered general electors residing in the district as of the date the petition is presented to the board. Any city or township clerk shall certify to the intermediate school district superintendent of schools the number of registered general electors residing in a school district when requested by the intermediate school district superintendent, who shall make the information available to the board of the district.

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 15 1966
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, et al.,
Appellants,

vs.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, et al.,
Appellees.

BRIEF OF APPELLANTS IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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1. Grand Rapids School District as a Proper Party Plaintiff.

The three judge panel below recognized that the individual plaintiffs had standing to raise the constitutional issues by deciding the case on the merits. Appellees by confining their attack on standing to plaintiff school district-Grand Rapids (Appellees' Motion, pp. 7-9) inferentially recognize the standing of the individual plaintiffs to assert their constitutionally protected rights. Since the Grand Rapids School District is the vehicle through which the one unit vote of 200,000 individual citizens is cast, it has standing and is a proper and necessary party plaintiff. The School District, as well as the individuals, are the victims of arbitrary action of the defendant County Board of Education whose members are perpetuating their self interest.(1) Under such circumstances the School District has standing to raise the constitutional issues.(2)

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(1) Stipulation of Facts, paragraph 15; Appellees' Motion to Dismiss or Affirm, page 6b.

(2) *NAACP v. Alabama*, 357 U.S. 449, page 459 (1958).

2. Validity of Boundary Changes Ordered by the County Board of Education.

The posture of this appeal is governed by the issue unanimously asserted by the three judge court; the applicability of *Gray v. Sanders*. Acceptance of the appeal by this Court is in no way affected by an ultimate decision relating to the boundary changes.

3. Equal Protection at Local Level.

Appellants have heretofore established the shocking contract of the voting power of a resident of the Grand Rapids School District *vis a vis* that of a resident of a rural district. *Reynolds v. Sims*, 377 U.S. 533, and several companion cases have presented no such rank discrimination.

Recognizing that there is really no answer that can be formulated to the stated facts (2,000 to 1 disparity in voting strength) the appellees have chosen to totally ignore the problem. This is accomplished by appellees through the artful process of asserting that appellants really don't have a "constitutional or statutory absolute right to vote" for county school board members (p. 9, Appellees' Motion). This oversimplification, which is just a legalism to deny rights to citizens, overlooks the fact that the equal protection clause is intended to do far more than to protect the *act* of voting or *casting* a ballot. The equal protection clause guarantees equal representation for equal numbers of people and any scheme or device to the contrary, no matter how simple or sophisticated, must fall by the wayside. Georgia was not, constitutionally, required to provide a primary election system for nomination of Democratic candidates for various state-wide offices. Nomination by state convention would obviously be constitutional. Or, constitutionally speaking, the offices could be filled by appointment. But once an election is provided, equal protection must be accorded; invidious discrimination based upon residence within the geographical unit will not be tolerated (*Gray v. Sanders*, 372 U.S. 368). In Tennessee,

constitutionally speaking, there is no mandate that there be a state house of representatives; a unicameral legislature would be constitutional; as would election at large of the house members. But once an election representative body is provided for, elected for districts, invidious discrimination by varrying the size of the districts is a denial of equal protection of the laws (*Baker v. Carr*, 369 U.S. 186). Likewise in Michigan, constitutionally speaking, there is no obligation to create county school districts; their responsibilities could be handled by appointed officials; but once these functions are given to an elected body purporting to represent a certain geographical unit, the election system devised cannot invidiously discriminate because of race, sex, occupation, income or location of one's home within the geographical unit (*Gray v. Sanders*, supra, p. 379). A system which does not provide equal representation for equal numbers of people regardless of the method used to accomplish the result is unconstitutional. *Baker*, *Gray* and *Reynolds* establish that substance not form is important when constitutional rights are involved. The method used in electing county school board members, *in substance*, has the same resulting invidious discrimination condemned in these three cases and the form by which this is accomplished is unimportant.

Appellees' assertion that Michigan conferred no "constitutional or statutory absolute right to vote" for county school board members has been completely answered by this court in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). The individuals there involved likewise had no "constitutional or statutory absolute right" to remain as residents of the City of Tuskegee, yet the scheme or devise used to exclude them from the city boundaries was invalidated (p. 347):

> "When a state exercises power wholly within the domain of state interest it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right."

In *Gomillion* the federally protected right was against discrimination based on race or color (Fifteenth Amendment);[3] here the federally protected right is equal protection and against invidious discrimination (Fourteenth Amendment).[4]

The entire three judge panel at the District Court level had no difficulty seeing through form to the substance. The court below rejected these arguments of appellees when all three judges agreed that the primary question was one of whether or not *Gray v. Sanders* applied to the local level of government. The majority was reluctant to so hold without clearer direction from this Court.

Appellees on the other hand because of the force of Judge Fox's reasoning in dissent, and the weight of other authority almost all of which apply *Baker, Gray* and *Reynolds* to local government (see citation of authority in our Jurisdictional Statement) apparently concede, or at least do not care to argue the point, of application of equal protection-apportionment principles to the local level of government.

The diluge of decisions handed down by the lower federal courts and the state courts, which are being supple-

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(3) It should be noted that Justice Whittaker concurred in *Gomillion* on the ground of equal protection under the Fourteenth Amendment, rather than the Fifteenth.

(4) Also see the recent Minnesota case of *Hanlon v. Towley*, Minn., 142 N.W. 2d 741 (1966), where the same argument as to "no absolute right to vote" at the local level of government was emphatically rejected by the Supreme Court of Minnesota by reference to *Gomillion* and the following rationale (p. 745 of 142 N.W. 2d):

> "While it appears to be well within the power of the legislature under Minn. Const. art. 11 to withdraw county government from electoral control and appoint or otherwise designate municipal officials ex officio to exercise the powers delegated to the county without running afoul of the equal protection clause, so long as the present system of a representative form of government is maintained, the fundamental nature of the right to vote inescapably requires the application of fundamental principles. Although not urged by appellants, the fact that the right to vote is granted by statute rather than by our constitution is a distinction without constitutional significance. Once granted, it becomes a fundamental right indigenous to self-government and preservative of other civil and political rights, including the right to equal representation. * * *"

mented by new decisions day by day,[5] make it obvious that some day this Court will have to resolve this conflict which has developed.

In pressing their "Motion to Dismiss" on the presumed basis that "the question on which the decision of the cause depends is so unsubstantial as not to need further argument" the appellees actually repudiate the clear holding of the trial court as to the primary question in this case. All these members of the District Court consider and recognize this as a *Gray v. Sanders* "voting case", thereby rejecting appellees' argument. If they are correct in this (and we submit they are) then it logically follows that there is but on issue remaining: the protection of local government from the autocratic and unrestrained minority control of the majority.

SUMMARY

The words of this Court in 1954 that "today, education is perhaps the most important function of state and local governments" (*Brown v. Board of Education*, 347 U.S. 483, p. 493) is even more applicable in 1966. It follows that democracy at the school board level is as essential as it is in the state house.

This Court has returned democracy to millions of people in this country in the functioning of state government in its holdings in *Baker, Gray* and *Reynolds*. There is no logic in abandoning majorities to the will of minorities at the local level. Frustration of the will of majorities where the people can function most effectively in the solution of their problems on a day to day basis will merely result in ineffective local government yielding to more federal control.

---

(5) See *Strickland v. Burns*, D.C. Tenn., no citation available, (decided July 1, 1966), where by a 2-1 vote it was held that equal protection-apportionment principles apply to local school boards in Tennessee. Contrary-wise see *Moody v. Flowers*, D.C. Ala. 256 F. Supp. 195, where by a 2-1 vote it was held that equal protection-apportionment principles did not apply to the Houston County Board of Revenue and Control. Also see *Bailey v. Jones*, S.D., 139 N.W. 2d 385 holding that equal protection-apportionment principles apply to county government.

The reasoning of the majority in its opinion does not involve a refusal to recognize the logic or realities of appellants' claims. As stated by Judge Kent:

> "We recognize that the Supreme Court of the United States may at some time in the future reach the conclusion that the District Courts of the United States have the power and duty to prescribe guide lines for the selection of the many boards and commissions created and organized in connection with local government. * * *" (Jurisdictional Statement, p. 2a)

Appellants submit that now is the time for a meaningful mandate to the District Courts to logically implement *Baker, Gray* and *Reynolds*.

We pray review and reversal.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

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No. 430

JAMES SAILORS, et al.,
Appellants,

vs.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, et al.,
Appellees.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

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BRIEF FOR JAMES SAILORS, ET AL.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, et al.,
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THE BOARD OF EDUCATION OF THE COUNTY OF KENT, et al.,
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On Appeal from the United States District Court for the Western District of Michigan, Southern Division

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BRIEF FOR JAMES SAILORS, ET AL.

OPINIONS BELOW

The majority and dissenting opinions of the District Court dated May 2, 1966, R. 198-222, are reported in 254 F. Supp. 17 (D.C.W.D. Mich. 1966).

JURISDICTION

The appellants brought suit[1] under 42 U.S.C. §§ 1981, 1983; 28 U.S.C. §§ 1331, 1343 seeking an injunction and declaratory relief restraining the enforcement, operation

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[1] A three judge District Court was convened pursuant to 28 U.S.C. § 2281.

and application of Section 294 of the Michigan School Code[2] on the grounds that they were being denied full and equal voting rights and full and equal representation in the election of members of the governing board of The Board of Education of the County of Kent, a school district under Michigan law exercising jurisdiction county wide, as secured by the provisions of the equal protection clause of the Fourteenth Amendment to the United States Constitution[3] (R. 1-88).

The order of the District Court dismissing the complaint was dated and entered May 2, 1966 (R. 223-224).

James Sailors, et al. filed their Notice of Appeal on June 16, 1966 (R. 224-225).

The order of the Supreme Court of the United States noting probable jurisdiction was dated and entered December 5, 1966, 87 S. Ct. 499 (R. 226).

The jurisdiction of this Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1253.

The following decisions sustain the jurisdiction of this Court to review the judgment on appeal in this case: *Nixon v. Herndon*, 273 U.S. 536; *Smiley v. Holm*, 285 U.S. 355; *United States v. Classic*, 313 U.S. 299; *United States v. Saylor*, 322 U.S. 675; *Baker v. Carr*, 369 U.S. 186; *Gray v. Sanders*, 372 U.S. 368; *Wesberry v. Sanders*, 376 U.S. 1; *Reynolds v. Sims*, 377 U.S. 533; *WMCA v. Lomenzo*, 377 U.S. 633; *Davis v. Mann*, 377 U.S. 678; *Roman v. Sincock*, 377 U.S. 695; *Lucas v. Colorado General Assembly*, 377 U.S. 713.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Amendment XIV, Section 1, Constitution of the United States, is set forth in Appendix A at p. 1a.

2. 42 U.S.C. §§ 1981, 1983; 28 U.S.C. §§ 1331, 1343 are set forth in Appendix B at pp. 1a-2a.

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[2] C.L. Mich. '48 § 340.294, M.S.A. § 15.3294; Appendix C, p. 2a.

[3] See Appendix A, p. 1a.

3. Section 294 of the Michigan School Code (C.L. Mich. '48 § 340.294, M.S.A. § 15.3294) and 294a of the Michigan School Code (C.L. Mich. '48 § 340.294a, M.S.A. § 15.3294[1]) which replaced Section 294, initially sought to be invalidated, are set forth in Appendix C, at pp. 2a-5a.

QUESTION PRESENTED

> "The primary question is whether or not the guarantees of the equal protection clause of the Fourteenth Amendment to the Federal Constitution are extended to electors of local boards in the State of Michigan, which local boards elect intermediate (county) boards of education in accordance with a system paralleling the county-unit system invalidated by the Supreme Court in *Gray v. Sanders*, 372 U.S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821 (1963)."

The appellants accept and adopt the foregoing statement by District Judge Fox, dissenting opinion (R. 210), and concurred in by Circuit Judge O'Sullivan and District Judge Kent, majority opinion (R. 220), as the question presented in this case.

STATEMENT OF THE CASE

The appellants, James Sailors, *et al.*, as citizens of the United States and the State of Michigan, and as qualified and registered electors of Kent County (R. 122) commenced suit in the United States District Court on February 15, 1963 (R. 1). Plaintiffs sought to enjoin the enforcement and operation of Section 294 of the Michigan School Code[4] pertaining to the county-unit system of electing county school board members. When Section 294a[5], which continued the county-unit device, replaced

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[4] Supra, footnote 2; Appendix C, p. 2a.

[5] C.L. Mich. '48, § 340.294a; M.S.A. § 15.3294(1), Appendix C, p. 4a.

Section 294 the plaintiffs also sought to invalidate Section 294a (R. 96).[6]

On June 4, 1964 the motion of William A. Duthler, *et al.*, resident electors of Kent County, Michigan, to intervene as party plaintiffs was granted by the District Court (R. 135). The complaint of intervening plaintiffs was filed on June 19, 1964 (R. 88).

The case was submitted to the three-judge panel on stipulated facts (R. 121-194).

Under Section 294 and its replacement 294a of the Michigan School Code, school board members for county school districts are elected by a Georgia-type county-unit system, which was struck down in *Gray v. Sanders, supra;*[7] specifically, school board members in each local school district within the county are elected at at-large elections to terms of three years, staggered so that the term of one or more board members expires each year. One school board member from each local school district within the county attends a biennial meeting called by the county superintendent of schools to elect and fill the seats of county school board members whose terms are expiring. There are five county school board members elected to staggered six year terms. Election is by majority vote of those present at the biennial election, with the representative of the people in each local school district having one vote irrespective of the number of people represented.[8] The federal census figures by school districts were not available except in the case of Grand Rapids where the boundaries were the same as that of the City of Grand Rapids. A special census was taken in four of the smaller districts. A tabulation is as follows (R. 163):

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[6] The amendment to the original complaint was apparently not made part of the Transcript of Record. It is set forth in Appendix D, pp. 5a-6a.

[7] As phrased by District Judge Fox: "This is essentially a unit system of voting — each school district within the county receives one vote in the election of each of the five members of the County Board." (R. 200)

[8] See Appendix C, p. 2a for the full text of this statutory county-unit vote system.

Local School District	Population	Vote	Population-Variance Ratio
Ashley (Gratton #6 Fractional)	145	1	1391 to 1
Boyd (Alpine #10)	191	1	1056 to 1
Hoag (Solon #8)	111	1	1818 to 1
Nelson Center (Nelson #6)	99	1	2038 to 1
Grand Rapids (Grand Rapids #1)	201,777	1	1 to 1
Kent County Total	363,187		

The 0-19 school census taken annually in each local school district illustrates the relative size population-wise of the 40 local school districts within Kent County in 1963 and the 39 local school districts in 1964. For a complete tabulation see R. 165 which shows a range in school census between 31 and 75,863 for 1963, and 32 and 76,395 for 1964.

The people in Grand Rapids constitute 55% of the population of the county (R. 84-86, 132) but have only 1/40th or 2½% of the voting power in electing county school board members. A voter in Nelson Center has 2,000 times the voting power of the voter in Grand Rapids (R. 132, 163). Based upon the 0-19 school census in 1963, 97.8% of the population of the county resided in the 19 larger school districts and the remaining 2% resided in the 21 smaller school districts and under the county-unit system referred to can control county school affairs (R. 133, 166). The malapportionment was even worse in 1964 (R. 166). The correlation between school census figures (ages 0-19) and actual population while not 100%[9] is good enough for purposes of deciding the constitutional issues

[9] The 1960 population figures show that 55.6% of the county's population resided within the School District of the City of Grand Rapids while an extension of the 1963 0-19 school census count would indicate that the total had dropped to 48% by 1963 (R. 133, 165). In Nelson Center actual count in 1963 indicated .027% of the county population resided within Nelson Center, whereas the 1963 0-19 school census would indicate a .035% figure (R. 163, 165).

raised in this case since in any event the population variance ratios in the neighborhood of 2000 to 1 are so great that no issue of "substantial equality" is presented.[10]

Appellants, below, sought to invalidate the county unit system and to enjoin all further elections thereunder and to require at-large election of county school board members on a one person one vote basis, or on the basis of apportioning unit votes in accordance with population (R. 9, 97).

The District Court by 2-1 vote denied the appellants any of the relief sought. The whole panel agreed that this case presented the question of applicability of *Gray v. Sanders, supra,* and *Reynolds v. Sims, supra, et al.,* to the local level of government. The majority opinion states:

> "The facts and issues in connection with this case are very ably set forth in the Opinion of Judge Fox (R. 220).
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> • • •
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> "The matter of malapportionment of boards and agencies of the states and their subsidiaries has not yet been before the United States Supreme Court" (R. 220).
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> • • •
>
> "We recognize that the Supreme Court of the United States may at some time in the future reach the conclusion that the District Courts of the United States have the power and duty to prescribe guidelines for the selection of the many boards and commissions created and organized in connection with local government. We are satisfied that the Supreme Court of the United States has not yet reached that

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[10] *Reynolds v. Sims,* 377 U.S. 533, 577, 84 Sup. Ct. 1362, 1390:

> "• • • Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any citizen in the State."

point. We are satisfied that we should not anticipate that the Supreme Court will reach that point" (R. 221-222).

In contrast, the Honorable Noel P. Fox, District Judge, in dissent, answered the primary question as follows:

> "Under the authority of Reynolds and other decisions of the United States Supreme Court herein discussed, I can see no warrant to arbitrarily cut off the citizens' right to fair representation at the county level" (R. 214).

ARGUMENT

As heretofore stated in our Jurisdictional Statement, it is contended that a living, working democracy at the local level of government is just as vital and just as important as it is in the State House (*Baker v. Carr, supra, Reynolds v. Sims, supra*); and just as vital and just as important as it is in the election of state-wide office holders (*Gray v. Sanders, supra*); and furthermore, that "Today, education is perhaps the most important function of state and local governments." (*Brown v. Board of Education*, 347 U.S. 483, p. 493). We subscribe to the principle that a reversal in this case is not only important to appellants but is equally crucial to a functioning democracy at the local level of government and to education systems nationwide.[11]

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[11] Not only is education one of the most important functions of state and local governments, but numerically speaking the school board is the most common form of governmental unit in the United States. See *U. S. Advisory Commission on Inter-Governmental Relations, Performance of Urban Functions; Local and Area Wide* 78 (1963). In 1962 there were over 34,000 of these autonomous bodies, most of them popularly elected. (See U.S. Department of Commerce Bureau of the Census, 1965 Statistical Abstract of the United States 419.) See Note, 79 Harv. Law Rev. 1228 (1966) at 1275 where the author observes: "The electoral districts from which these (school) boards are chosen are often drawn to coincide with school attendance districts, so that the electoral districts often have neither equal numbers of inhabitants nor equal numbers of children. Probably no public issue arouses the interest of more municipal citizens than public education; heated battles over taxation and bond issues, consolidation of school districts, quality of education, and segregation indicate that any major shift in local school board policy will be opposed and defended vigorously."

Since the landmark decision of *Baker* the federal and state courts have been besieged with malapportionment cases involving local government. Almost all of the decided cases apply Baker, Gray and Reynolds to local government.[12] In Michigan the Supreme Court is deadlocked, waiting for an authoritative decision from this court.[13] The few additional cases refusing to apply, *Baker, et al*, to the local level of government are in the distinct minority.[14]

While it may have unique features, the county-unit system of electing county school board members in Michigan is essentially the same as the system condemned in

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[12] *Ellis v. Mayor and City Council of Baltimore*, 234 F. Supp. 945 (D.C. Md. 1964) affirmed, 352 F2d 123 (4th Cir. 1965) (City Council); *Mauk v. Hofman*, 87 N.J. Super. 276, 209 A2d 150 (Super. Ct. of N.J., Ch. Div. 1965) (County Board of Freeholders); *Bianchi v. Griffing*, 217 F. Supp. 166, 238 F. Supp. 997 (D.C.E.D.N.Y. 1965), appeal dismissed, 382 U.S. 15 (1965) (County Board of Supervisors) *Goldstein v. Rockefeller*, 45 Misc. 2d 778, 257 N.Y.S. 2d 994 (Sup. Ct. 1965) (County Board of Supervisors); *Augostini v. Lasky*, 46 Misc. 2d 1058, 262 N.Y.S. 2d 594 (Sup. Ct. 1965) (County Board of Supervisors); *Shilbury v. Board of Supervisors*, 46 Misc. 2d 837, 260 N.Y.S. 2d 931 (Sup. Ct. 1965) (County Board of Supervisors); *Seaman v. Fedourich*, 262 N.Y.S. 2d 444, 16 N.Y. 2d 94 (Ct. of App. 1965) (Common Council); *Town of Greenburgh v. Board of Supervisors*, 49 Misc. 2d 116, 266 N.Y.S. 2d 998 (Sup. Ct. 1966) (County Board of Supervisors); Opinion of the Justices, 106 N.H. 233, 209 A2d 471 (1965) (Applying state legislation to ward boundaries) *State ex rel Sonneborn v. Sylvester*, 26 Wis. 2d 43, 132 N.W. 2d 249 (1965) (County Board of Supervisors); *Delozier v. Tyrone Area School Board*, 247 F. Supp. 30 (D.C.W.D. Pa. 1965) (School Board); *Simmon v. Lafayette Parrish*, 226 F. Supp. 301 (D.C.W.D. La. 1964) (Police Jury-Parrish governing authority) (Defendant's motion to dismiss, denied); *Damon v. Lauderdale County Election Comm'rs.*, Civil No. 1197-E. (D.C.S.D. Miss. 1964) [Informal opinion reprinted in *National Municipal League, Court Decisions on Legislative Reapportionment*, Vol. 13, p. 139 (1965)] (County Board of Supervisors); *Miller v. Board of Supervisors*, 405 P2d 857, 46 Cal. Rptr. 617 (1965) (County Board of Supervisors applying state statute requiring equal population districting); *Graham v. Board of Supervisors*, 269 N.Y.S. 2d 477 (Sup. Ct. App. Div. 1966) appeal dismissed, 271 N.Y.S. 2d 295 (County Board of Supervisors); *Hanlon v. Towey*, 142 N.W. 2d 741 (Minn. 1966) (County Board of Commissioners); *Armentrout v. Schooler*, 409 S.W. 2d 138 (Sup. Ct. Mo., 1966) (City Council); *Strickland v. Burns*, 256 F. Supp. 824 (D.C.M.D. Tenn. 1966) (County School Commission); *Martinolich v. Dean*, 256 F. Supp. 612 (D.C.S.D. Miss. 1966) (County Supervisors); *Bailey v. Jones*, 139 N.W. 2d 285 (1966) (County Commissioners); *Montgomery County Council of Garrett*, 222 A 2d 164 (Md. Ct. App. 1966) (County Council).

[13] *Muskegon Prosecuting Attorney v. Klevering*, 377 Mich. 666 (1966); *Brouwer v. Kent County Clerk*, 377 Mich. 616 (1966).

[14] *Johnson v. Genesee County*, 232 F. Supp. 567 (D.C.E.D. Mich. 1964). The decision in *Johnson* is questionable because the District Judge was of the opinion that he was bound by the decision of the Supreme Court in *Tedesco v. Board of Supervisors of Elections*, 389 U.S. 940. Reliance on *Tedesco* would seem misplaced because there the plaintiffs sought to correct malapportionment of the city commission based upon the privileges and immunities clause of the 14th Amendment rather than the equal protection clause and because in *Tedesco* the

Gray v. Sanders, supra.[15] As in *Gray*, there is here an indirect debasing or diluting of a citizen's vote; where one person's vote counts for more than another's depending upon his place of residence. The common denominator in *Baker, Gray, Reynolds*, and the case at bar is that in each instance there is a lack of equal representation for equal numbers of people. The clear lesson of these cases is that an indirect debasing or diluting of a citizen's vote, whether the scheme is simple or sophisticated, will be condemned, the same as it has been in the past when done directly by ballot box stuffing (*Ex parte Siebold*, 100 U.S. 371); vote fraud (*United States v. Mosely*, 238 U.S. 383); or by a complete denial of the right to vote (*Nixon v. Herndon*, 273 U.S. 536). As Chief Justice Warren stated in the opinion of this Court in *Reynolds*:

> "* * * (T)he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." (377 U.S. p. 555).

Justice Douglas' statement in the opinion of this Court in *Gray* is equally pertinent:

> "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote — whatever

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[14] Continued—

appeal was dismissed in a memorandum opinion for want of a substantial federal question, 339 U.S. 940, 7 days after the Supreme Court handed down the *South v. Peters*, 339 U.S. 959, decision which reiterated previous decisions that apportionment matters were not justiciable. Obviously, *Tedesco* followed *South v. Peters*, and the reversal of *South v. Peters* in *Baker v. Carr*, and *Gray v. Sanders* would have the same effect on *Tedesco*. See also *Port Jefferson v. Board of Supervisors*, 256 N.Y.S. 2d 34 (Sup. Ct. 1964) where the trial court refused to order reapportionment "in view of the lack of appellate court precedent in New York State." In view of the appellate court decisions in the New York State courts and the *Bianchi* case all since 1964 the reason for such hesitancy is gone. *Avery v. Midland County* 406 S.W. 2d 422 (Tex. 1966) (County Court [Board] Supervisors) also relying on *Tedesco*; and *Moody v. Flowers*, 256 F. Supp. 195 (D.C.M.D. Ala. 1966) (County Board of Revenue & Control) Probable juris. noted, 87 S. Ct. 507 (1966).

[15] Judge Fox states that the "local boards elect intermediate (county) boards of education in accordance with a system paralleling the county-unit system invalidated by the Supreme Court in *Gray v. Sanders*." (R. 201)

their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home be in that geographical unit. This is required by the equal protection clause of the Fourteenth Amendment." (372 U.S. p. 379).

And as Chief Justice Warren emphasized in *Reynolds*:

"* * * (T)he fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State. * * *" (377 U.S. pp. 560-561).

This constitutional concept of "equal representation for equal numbers of people" cannot be satisfied by the argument advanced by the appellees that since appellants do not have the constitutional or statutory right to vote for county school board members no constitutional issue of equal protection is presented.[16] The insidiousness of that position cannot remain unchallenged. In sum, the appellees represent to this court that a so-called "elective system", spawned, nurtured and rigged to foster and advance the self interests of a minority which emasculates the rights and properties of the majority, must remain immune from the inspection by this court because the elective process is not secured to them under the provisions of the Constitution and statutes of the state. Obviously, the fate of the appellants would be far better served in the hands of an enlightened, appointed board or an executive whose motivation was to serve the interests of all people alike. For the last decade the appellants have been the victims of the conduct of an oligarchy and when they ask for equality they are told that the 1/2000th of a vote they have is more than the law guarantees to them. This oversimplification, which is just a legalism to deny rights to citizens, overlooks the fact that the equal protection clause is intended to do far more than to protect the *act* of voting or *casting* a ballot. The equal protection clause guarantees equal

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[16] Page 9, Appellees' Motion to Dismiss.

representation for equal numbers of people and any scheme or device to the contrary, no matter how simple or sophisticated must fall. Georgia was not, constitutionally, required to provide a primary election system for nomination of Democratic candidates for various state-wide offices. Nomination by state convention would obviously be constitutional. Or, constitutionally speaking, the offices could be filled by appointment. But once an election is provided, equal protection must be accorded; invidious discrimination based upon residence within the geographical unit will not be tolerated (*Gray v. Sanders, supra*).

In Tennessee, constitutionally speaking, there is no mandate that there be a state house of representatives; a unicameral legislature would be constitutional; as would election at large of the house members. But once an elective representative body is provided for, elected from districts, invidious discrimination by varying the size of the districts is a denial of equal protection of the laws (*Baker v. Carr, supra*). Likewise in Michigan, constitutionally speaking, there is no obligation to create county school districts; their responsibilities could be handled by appointed officials; but once these functions are given to an elected body purporting to represent a certain geographical unit, the election system devised cannot invidiously discriminate because of race, sex, occupation, income or location of one's home within the geographical unit (*Gray v. Sanders, supra*, p. 379). A system which does not provide equal representation for equal numbers of people regardless of the method used to accomplish the result is unconstitutional. *Baker, Gray and Reynolds* establish that substance not form is important when constitutional rights are involved. The method used in electing county school board members, *in substance*, has the same resulting invidious discrimination condemned in these three cases and the form by which this is accomplished is unimportant.

Appellees' assertion that Michigan conferred no "constitutional or statutory absolute right to vote" for county school board members has been completely answered by this Court in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). The individuals there involved likewise had no "constitutional or statutory absolute right" to remain as residents of the City of Tuskegee, yet the scheme or devise used

to exclude them from the city boundaries was invalidated (p. 347):

> "When a state exercises power wholly within the domain of state interest it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right."

In *Gomillion* the federally protected right was against discrimination based on race or color (Fifteenth Amendment);[17] here the federally protected right is equal protection and against invidious discrimination (Fourteenth Amendment).[18]

The entire three judge panel at the District Court level had no difficulty seeing through form to the substance. The court below rejected these arguments of appellees when all three judges agreed that the primary question was one of whether or not *Gray v. Sanders* applied to the local level of government. The majority, below, was reluctant to so hold without clearer direction from this Court.

We wish to make our position crystal clear. We do *not* claim that all county-unit systems are unconstitutional *per se*. Rather, we only claim that a county-unit system which awards one unit vote to each local school district area within the county, irrespective of population, and where 99 people in one local school district area have the

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[17] It should be noted that Justice Whittaker concurred in *Gomillion* on the ground of equal protection under the Fourteenth Amendment, rather than the Fifteenth.

[18] Also see the recent Minnesota case of *Hanlon v. Towley*, Minn., 142 N.W. 2d 741 (1966), where the same argument as to "no absolute right to vote" at the local level of government was emphatically rejected by the Supreme Court of Minnesota by reference to *Gomillion* and the following rationale (p. 746 of 142 N.W. 2d):

> "While it appears to be well within the power of the legislature under Minn. Const. art. 11 to withdraw county government from electoral control and appoint or otherwise designate municipal officials ex officio to exercise the powers delegated to the county without running afoul of the equal protection clause, so long as the present system of a representative form of government is maintained, the fundamental nature of the right to vote inescapably requires the application of fundamental principles. Although not urged by appellants, the fact that the right to vote is granted by statute rather than by our constitution is a distinction without constitutional significance. Once granted, it becomes a fundamental right indigenous to self-government and preservative of other civil and political rights, including the right to equal representation. * * *"

same voice in county school board affairs as 201,000 people from another local school district area, is a denial of equal representation for equal numbers of people and hence a denial of equal protection and is unconstitutional.

This Court's recent decision in *Fortson v. Morris*, 87 S. Ct. 446 (1966) exemplifies the distinction we make. In *Fortson* the majority of this Court held that it was constitutional for the General Assembly of Georgia to elect the governor of the state even though the General Assembly was malapportioned since it was a *de facto* body. This Court held (p. 449, of 87 S. Ct.):

> "* * * Its duty now, under Article V of its Constitution, is to proceed to have the General Assembly elect its Governor from the two highest candidates in the election, unless, as some of the parties contend, the entire legislative body is incapable of performing its responsibility of electing a Governor because it is malapportioned. But, this is not correct. In Toombs v. Fortson, 384 U.S. 210, 86 S.Ct. 1464, 16 L. Ed.2d 482, affirming 241 F.Supp. 65, we held that with certain exceptions, not here material, the Georgia Assembly could continue to function until May 1, 1968. Consequently the Georgia Assembly is not disqualified to elect a Governor as required by Article V of the State's Constitution. * * *"

Implicit in this holding is that the body choosing the governor must be a properly apportioned representative body elected in a manner in which there is equal representation for equal numbers of people, or at least be *de facto* pending reapportionment. To equate *Fortson v. Morris* to the system allowed to stand by the lower court herein, would be to approve, without any obligation to reapportion, a system whereby all the county clerks in Georgia would meet and choose the governor. Such a system has the same diluting and debasing effect on a citizen's vote as the systems condemned in *Baker*, *Gray* and *Reynolds*, and would permit minority control.

This problem was analyzed by District Judge Fox, in dissent, below as follows (R. 214):

> "* * * This is not a situation in which the legislature has appointed a commission or board — no one is contending for a right to vote for appointed officials. The legislature has not chosen to appoint Boards for each of the Intermediate School Districts in the State of Michigan, in which case the function of providing for public education would be delegated, but not, legislatively speaking, the responsibility. For in that situation, the legislature would have delegated the function of providing for public education, but the appointees would have been directly responsible to the legislature, an equally apportioned body directly responsible to the people.
>
> "But here the legislature has delegated not only the function, but also the responsibility, which would not be objectionable but for the gross malapportionment in the existing system of selecting the Board. * * *"

The 40 member body composed of one local school board member from each school district which chooses or elects county school board members in Michigan is hardly the *de facto* body under orders to reapportion which was involved in *Fortson v. Morris, supra;* and hardly the "equally apportioned body directly responsible to the people" referred to by Judge Fox. Analyzed in the framework of *Fortson v. Morris, supra,* we seek either to have this 40 member body, which does the choosing or electing,[19] reapportioned to provide equal representation for equal numbers of people or an injunctive order enjoining the enforcement and operation of Section 294 and 294a of the Michigan School Code and requiring popular election of

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[19] This 40 member body also has the duty, annually, of approving the budget. C.L. '48 §340.298a, M.S.A. §15.3298(1) provides in part as follows:

> "* * * On or before March 1 of each year the board shall submit such budget to a meeting of 1 school board member named from each constituent school district to represent such a district. * * *"

county school board members.[20] Equal protection of the laws requires no less.[21]

To hold that equal protection principles of one person, one vote apply to a county board of supervisors, while attempting to distinguish the holding below on the ground that the county board of education involved "governmental agencies of special or limited power and jurisdiction", as a three-judge District Court recently did in *Martinolich v. Dean*, 256 F. Supp. 612, 615 (D.C.S.D. Miss. 1966); or to

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[20] Sections 294b and 294c of the Michigan School Code, C.L. '48 §§ 340.294b 340.294c, M.S.A. §§ 15.3294(2), 15.3294(3), authorize popular election of county school board members upon a favorable referendum vote within the county. See Appendix E, p. 6a for the full text of Sections 294b and 294c. These provisions for popular election are meaningless since a minute minority can thwart the calling of a referendum vote thereby perpetuating minority control. Note Judge Fox's analysis (R. 215):

> "The procedure outlined in M.S.A. 15.3294(2) and (3) is constitutionally unacceptable, requiring as it does that a majority of constituent school districts, representing more than 50% of the children on the last school census in the county district, must adopt resolutions in favor of such a procedure. The problem with this plan is that the Grand Rapids School District, with 48.04% of the school-age children in the Kent Intermediate School District, and 55.6% of the total population, would need the votes of nineteen other school districts (there being a total of 39 in Kent County) to bring about a popular election. Thus again, patently, a small minority has effective power to frustrate the will of the great majority."

[21] At least one state has recognized that a system for electing county school committee members, similar to the system in Michigan for election of members of the county school boards, must take into consideration the principles of equal representation. Under the Pennsylvania School Reorganization Act, (Pa. Stat. Ann. Tit. 24 § 2-202 et seq.) provision is made for all of the school directors of the county to meet for the purpose of electing an interim operating committee to be composed of nine of their number. The Reorganization Act specifically provides that (§ 3-303.1[b]) "in selecting (the members of) the interim operating committee, the incumbent school directors shall take into consideration the principle of proportionment representation according to population." In *Elberti v. Knasmen*, 254 F. Supp. 870 (D.C.E.D. Penn. 1966) plaintiffs claimed that the malapportionment resulting from Blanche Township, with a population of 1,747, having two members on the interim committee, in contrast to the Borough of Minersville, with a population of 6,961 and 50.7% of the total unit population in the county, also having only two members on the interim committee, was a violation of the equal protection clause of the Fourteenth Amendment. The Court agreed and held on page 872:

> "The present case is not one where the convention of incumbent school directors considered population along with other legitimate factors. Rather, it is a situation where the convention ignored the mandate of the statute requiring it to 'take into consideration the principle of proportionment representation according to population.'
>
> "Such a palpable disregard of the statute denying the people of Minersville its proper voice in school affairs works irreparable harm and gives rise to equitable relief."

argue that since some of the functions of county school boards are administrative and quasi-judicial and not exclusively legislative in character and that therefore equal protection should not apply as Circuit Judge Phillips did in his dissenting opinion in *Strickland v. Burns*, 256 F. Supp. 824, (D.C.M.D. Tenn. 1966) at 836, is to engage in technical distinctions having little meaningful significance. As District Judge Miller stated in his concurring opinion in *Strickland v. Burns*,[22] a 2-1 decision applying one man-one vote principles to the Rutherford County School Commission of Tennessee:

> "It is fruitless, in my view, to pursue the elusive distinction between legislative and administrative functions. Many attempts have been made to draw the distinction in varied contexts. But whatever value the dichotomy may have for some purposes to rationalize a particular result, I am convinced that it is inapposite here. So long as a subordinate body is vested with significant and important powers of government, whether they be labelled legislative, or administrative, or both, I can see no reason why it should be permissible under the equal protection clause for a state arbitrarily to debase the value of one person's vote in favor of another. I think that the powers and duties vested by state law in the Rutherford County School Commission are both significant and important. If the General Assembly of Tennessee sees fit to provide that the membership of such a body shall be chosen by popular vote, invidious discriminations between voters should be condemned under the 'one man, one vote' rule."

While advocates seek to project fine line distinctions between judicial and legislative functions, either as prescribed or exercised, the rights and properties of the appellants are perverted and/or expropriated by the county board. While the county board accomplishes this in the name of "education" they act in self interest (R. 129).

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[22] 256 F. Supp. p. 836.

That the equal protection clause of the Fourteenth Amendment proscribes activity by agencies of the state as well as the state itself is clear. As this Court stated in *Standard Computing Scale Company v. Farrell*, 249 U.S. 571, 577:

> "For the protection of the Federal Constitution applies, whatever the form in which the legislative power of the state is exerted; that is, whether it be by constitution, an act of the legislature, or an act of any subordinate instrumentality of the state exercising delegated legislative authority, like an ordinance of a municipality or an order of a commission."

And in *Cooper v. Aaron*, 358 U.S. 1 (1958) at 17:

> "(T)he prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action. * * * or whatever the guise in which it was taken. * * *"

For other decisions holding that equal protection applies at every level see *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, p. 68; *Yick Wo v. Hopkins*, 118 U.S. 356, p. 374.

The appellants in this case are not merely idealists bent upon implementing validly stated concepts of democracy. They are the victims of a vicious perversion of representative government, blatantly displayed in public session. A board member whose school district had filed a petition to further dismember the appellant school district actively participated in the emasculation of appellant district (R. 129). It was this series of shocking events that gave impetus to appellants to turn to the federal court for protection. It was the result of this glaring demonstration of action taken in contravention of the equal protection clause that plaintiffs sought to be protected from a transfer of their properties to another school district (R. 9). And, it was the illegal action of the improperly constituted county board which was busily dividing up the Grand Rapids School District as spoils of battle which prompted the intervening plaintiffs to pray that the transfer be declared null and void (R. 97).

The defendants have heretofore agreed that the court is faced with a determination of the constitutionality of an alleged malapportioned board and of the action it had taken on February 25, 1963 (R. 197).

The defendant county board has not received a *de facto* status as did the Georgia Assembly (*Fortson v. Morris, supra*, page 449). It is contended that the 2,000 to 1 voting disparity and the conduct of the county board does not entitle it to any such reprieve. Accordingly, appellants are entitled to a reversal of the action by the county board (*Fortson v. Morris, supra*, pages 449-452 and pages 453-454).

This Court has returned democracy to millions of people in this country in the functioning of state government in its holdings in *Baker, Gray* and *Reynolds*. There is no logic in abandoning majorities to the will of minorities at the local level. Frustration of the will of majorities where the people can function most effectively in the solution of their problems on a day to day basis will merely result in ineffective local government yielding to more federal control.

The reasoning of the majority in its opinion does not involve a refusal to recognize the logic or realities of appellants' claims. As stated by Judge Kent:

> "We recognize that the Supreme Court of the United States may at some time in the future reach the conclusion that the District Courts of the United States have the power and duty to prescribe guide lines for the selection of the many boards and commissions created and organized in connection with local government. * * *" (R. 221-222).

Appellants submit that now is the time for a meaningful mandate to the District Courts to logically implement *Baker, Gray* and *Reynolds*.

CONCLUSION

Appellants seek the following relief:

(1) That Section 294 and 294a of the Michigan School Code be held invalid and unconstitutional by virtue of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States;

(2) That the transfer resolution of February 25, 1963 adopted by the appellee, The Board of Education of the County of Kent, be held void and a complete nullity and of no force and effect;

(3) That an injunctive order issue requiring that in all subsequent elections for county school board members the representative of each local school district area be awarded a weighted vote based upon said local school district area's share of the total population of the county;

(4) In the alternative to paragraph (3), that an injunctive order issue requiring popular at-large elections on a one person-one vote basis of county school board members;

(5) In the alternative to paragraphs (3) and (4), that an injunctive order issue requiring that the 40 member body which elects county school board members be elected from districts containing populations of "substantial equality"; and

(6) That the judgment below be reversed and the cause be remanded to the District Court.

Respectfully submitted,

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Dated: February 16, 1967.

APPENDIX A

United States Constitution, Amendment XIV, § 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX B

28 U.S.C. § 1331:

"(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

"* * *"

28 U.S.C. § 1343:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"* * *

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States:

"* * *"

42 U.S.C. § 1981:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

42 U.S.C. § 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

APPENDIX C

§ 294 Michigan School Code; C.L. Mich. '48 § 340.294; M.S.A. § 15.3294:

"Each county superintendent of schools shall, in counties in which a county board of education has not been established or in case of the consolidation of 2 or more counties into a single county school district, by reasonable notice sent by registered mail call a meeting in the county of the secretaries of the boards of primary and fourth class school districts and the presidents of the boards in other school districts: Provided, That at a regular or special meeting of the board of any of the school districts, the board may by resolution designate any other member of the board to represent it. The meeting shall be held at the county seat or some other convenient place in the county on the first Monday of the second month following the effective date of this act, for the purpose of electing

a county board of education. The county superintendent of schools or his deputy shall act as secretary of the meeting and keep a complete record of the proceedings. The school officers above named shall choose from their number a chairman to preside over the meeting, and it shall be his duty to appoint from those present 3 tellers or inspectors of election, whose duty it will be to conduct and canvass the votes in the election of members of the county board of education. The above named school officers shall proceed to elect by ballot a board of education of 5 members, 1 for a term of 2 years, 2 for a term of 4 years, and 2 for a term of 6 years, and biennially thereafter on the first Monday in June there shall be elected for a term of 6 years a successor or successors to the member or members whose term of office shall expire. The persons elected need not be members of the boards of education of the county. Members of the first county board of education shall take office on the second Monday following the election. For the purpose of determining their terms of office the time between the date taking office and the next succeeding July first shall be considered 1 year. Each of said biennial elections shall be called and conducted in the same manner and by the same school officers or their successors as that of the first election, except that the meetings of secretaries and presidents of the aforementioned boards shall be held on the first Monday of June biennially and shall be called by the county superintendent of schools. After the first election the term of office of each member shall begin on the first day of July following his election. Not more than 2 members of the county board of education shall be elected from any 1 township or city. If any person elected fails to take the oath of office within 10 days after his election, or any member during his term shall die, be adjudged mentally incompetent, resign, be convicted of a felony under the penal laws of the State, or removes from the county, a vacancy shall thereby exist immediately without declaration of any officer and such vacancy shall be filled by the majority of the remaining members of the board of education. Persons appointed to fill vacancies shall hold office until the next following biennial June election, at which time persons will be elected for the unexpired term or terms. If any vacancy is

not filled within 30 days after it shall have occurred, the same shall be filled by the county board of supervisors of the county. Any member of a board, after a hearing, who shall be found guilty of wilful acts of misfeasance, malfeasance, or nonfeasance in office may be removed from office by the superintendent of public instruction in accordance with the provisions of section 253 of this act. In making appointments to fill vacancies, the appointing authority shall not appoint any person whose membership on the county board of education shall cause any township or city to be represented by more than 2 members upon said board."

§ 294a Michigan School Code; C.L. Mich. '48 § 340.294a; M.S.A. § 15.3294(1):

"The members of the board shall be elected biennially on the first Monday in June by a body composed of 1 member of the board of education of each constituent school district, who shall be designated by the board of education of the constituent school district of which he is a member. The secretary shall send a notice by certified mail of the hour and place of meeting to the secretary of the board of education of each constituent school district at least 10 days prior to the meeting. The president and secretary of the board shall act as chairman and secretary, respectively, of the meeting. The term of office of each member elected to the board shall be for 6 years and shall begin on July 1 following his election, except as hereinafter provided. Not more than 2 members of the board shall be from the same school district unless there are fewer districts than there are positions to be filled. Any vacancy shall be filled by the remaining members of the board until the next biennial election. Notice of the vacancy shall be filed with the state board of education within 5 days after its occurrence. If the vacancy is not filled within 30 days after it has occurred, it shall be filled by the state board of education. Candidates for election to the board shall be nominated by petitions which shall be signed by not less than 50 school electors of the district who are registered to vote in the city or township where they reside. Any qualified elector shall be eligible to sign as many

petitions as there are vacancies to be filled. Nominating petitions shall be filed with the secretary of the board not later than 30 days prior to the date of the biennial election. The secretary shall determine the sufficiency of said petitions, and the eligibility of the candidates therein nominated. The secretary shall cause to be prepared, printed or duplicated ballots for the biennial election, listing on said ballots the names of all candidates properly nominated. If no nominating petitions have been filed for a candidate to fill a vacancy then, in this event and only in this event, the chairman of the biennial election may accept nominations for that vacancy from the floor.

"The provisions of section 538 of this act shall apply to petitions for candidates for board members of intermediate districts unless herein otherwise provided."

APPENDIX D

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES SAILORS, et al,
Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, et al,
Defendants.

Civil Action
No. 4480

AMENDMENT TO COMPLAINT

Pursuant to authorization granted by this court by the order entered June 4, 1964 the plaintiffs amend their complaint by adding a new paragraph to be designated as paragraph 18 as follows:

18. Section 294a of the Public Acts of Michigan of 1962 which took effect March 28, 1963 is unconstitutional and is in violation of the equal protection and due process clauses of the 14th Amendment of the United States Constitution and all allegations regarding Section 294 of the School Code contained in paragraphs 6, 7, and 10 are hereby re-alleged with regard to said amendment (Section 294a of the School Code; C.L. '48 Sec. 340.294a; M.S.A. Sec. 15.3294 (1)).

Dated: June 18th, 1964.

Dutchess, Mika, Miles, Meyers, Merdzinski & Snow

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APPENDIX E

• • • Sec. 294b. Members of the board shall be chosen at popular elections in any intermediate school district adopting the provisions of sections 294b to 294h of this act.

"• • • Sec. 294c. Any board may submit to the electors of the constitutent [sic] school districts comprising such intermediate school district the question of adoption of sections 294b to 294h of this act. The question shall be in substantially the following form:

"Shall the provisions of sections 294b to 294h of Act No. 269 of the Public Acts of 1955, as amended, providing for popular election of members of the intermediate school district board of education be effective within the constituent school district of . . . county?

Yes ( )
No ( )"

The board shall submit the question upon receipt of resolutions adopted by a majority of the boards of education of constituent school districts and representing more than 50% of the children on the last school census in the intermediate district. The resolutions of the constituent boards of education shall all be adopted within a period of 3 months.

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STATUTE

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL., APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

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BRIEF FOR APPELLEE THE BOARD OF EDUCATION OF THE COUNTY OF KENT AND THE INDIVIDUAL APPELLEES AS MEMBERS THEREOF

QUESTION PRESENTED

Is the composition of local units of government [such as county (intermediate) school boards of education] a state matter and not a subject within the jurisdiction of this Court?

From the commencement of this action, February 15, 1963, appellees have contended that the Court lacks jurisdiction over the subject matter and that the complaint, as amended, fails to state a claim upon which relief can be granted (R. 107, 110, 117, 119, 120, 195).

On the merits below, the issue was presented to the District Court, as follows:

> "2. Is the composition of local units of government, such as county (intermediate) school boards of education, a state matter and not a subject within the jurisdiction of the Court?" (R. 195)

ARGUMENT

The composition of local units of government is a state matter and not a subject within the jurisdiction of this Court.

This Court has never concerned itself with disputes over the local allocation of government functions and powers.

Mr. Justice Frankfurter, in his dissent in *Baker v Carr*, 369 US 186, 7 L ed 2d 663, 82 S Ct 691 (1962), discusses the "consistent refusal of this Court to find that the federal Constitution restricts state power to design the structure of state political institutions * * *" (Note 23, 369 US 290, 7 L ed 2d 728, 82 S. Ct. 750).

District Judge Stephen J. Roth in *Johnson v Genesee County, Michigan*, 232 F Supp 567 (1964), at page 570, said:

> "Neither the Fourteenth Amendment, nor Article 4 of the Constitution of the United States, has so far been interpreted by the Supreme Court of the United States to require the apportionment of local legislative bodies in a state in accordance with population."

Judge Roth concluded (232 F Supp 572):

> "Under the prevailing view of the United States Supreme Court, as we have pointed out above, the composition of local units of government is held to be a state matter. Under the rule of stare decisis, this Court is not free to consider the subject of the apportionment of representation on local legislative bodies. It may well be that the time will come when the application of the Fourteenth Amendment will be extended that far. The more likely development is that the June 15, 1964, rulings of the Supreme Court in cases dealing with the state legislatures of Alabama, New York, Maryland, Delaware, Virginia and Colorado will result in legislatures in our states which will be proportionately representive of people, and therefore, likely to themselves establish in local legis-

lative bodies a vastly different balance between people and governmental power."

In *Sailors* below, 254 F Supp 17, Chief District Judge W. Wallace Kent, writing with the concurrence of Circuit Judge Clifford O'Sullivan, said at 28-29:

> "The matter of malapportionment of boards and agencies of the states and their subsidiaries has not yet been before the United States Supreme Court. We recognize the impact of the cases to which reference is made in Judge Fox's opinion, but do not agree that the decisions to which reference is therein made require the District Courts of the United States to review the manner of apportionment and constitution of each and every board and agency of the several states, cities, villages, counties, parishes, townships, metropolitan districts, and all other such policy and decision making bodies which are in existence for the purpose of carrying out the intent of the legislatures which authorize their creation.
>
> "*Reynolds v Sims*, 377 US 533, 84 S Ct 1362, 12 L ed 506, is unquestionably authority for the 'one man one vote' premise to be used in the apportionment of state legislatures. Citations of authority have been given in Judge Fox's opinion which he concludes would authorize the imposition of this same premise upon every agency of every body of government in existence in this country today. With this we are not in accord."

Judge Kent continued: "We prefer the result reached in *Johnson v Genesee County, Michigan*, 232 F Supp 567" and then quoted Judge Roth as above.

All of the cases since *Baker v Carr* and *Reynolds v Sims* have involved only the apportionment of congressional districts and state legislatures on the one man one vote doctrine.

Although concededly in another context, this Court said in *Reynolds v Sims*, 377 US 533, 575, 12 L ed 2d 506, 535, 84 S Ct 1362, 1388:

> "Political subdivisions of States — counties, cities, or whatever — never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in *Hunter v City of Pittsburgh*, 207 US 161, 178, 52 L ed 151, 159, 28 S Ct 40, these governmental units are 'created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them,' and the 'number, nature and duration of the powers conferred upon [them] * * * and the territory over which they shall be exercised rests in the absolute discretion of the State.'"

Because of its relevancy to the case at bar and for the convenience of the Court, we attach as Appendix A the full opinion of Circuit Judge Harry Phillips in *Strickland v Burns*, 256 F Supp 824, 836 (1966), who concludes that the Federal Courts should not be concerned with the composition of local units of state government.

The confusion abounding today throughout the courts of our Country with reference to the interpretation and effect of *Baker v Carr*, *Reynolds v Sims* and their progeny, is perhaps best illustrated by the decisions of the Supreme Court of Michigan in *Brouwer v Kent County Clerk*, 377 Mich 616, and *Muskegon Prosecuting Attorney v Klevering*, 377 Mich 666, decided April 5, 1966.

In commenting on *Gray v Sanders*, 372 US 368, 9 L ed 2d 821, 83 S Ct 801, Mr. Justice Black, speaking for the Court in *Fortson v Morris*, 385 US 231, 233-34, 17 L ed 2d 330, 332-33, 87 S Ct 446, 448, said:

> "* * * This case, as was emphasized, had to do with the equal right of 'all who participate in the election', 372 US, at 379, 9 L ed 2d at 829, to vote and have

their votes counted without impairment or dilution. But as the Court said, 372 US, at 378, 9 L ed 2d at 829, the case was 'only a voting case'. Not a word in the Court's opinion indicated that it was intended to compel a State to elect its governors or any other state officers or agents through elections of the people rather than through selections by appointment or elections by the State Assembly. It is wrongly cited as having either expressly or impliedly decided that a State cannot, if it wishes, permit its legislative body to elect its Governor."

"* * * There is no provision of the United States Constitution or any of its amendments which either expressly or impliedly dictates the method a State must use to select its Governor. * * *"

There is no provision in the United States Constitution or any of its amendments, neither is there any decision of this Court, dictating or compelling a State to elect every board and agency created for its better government, rather than through selections, such as the method adopted for the selection of Michigan county boards of education in the instant case.

See Appellants' brief, Appendix C, page 2a. through 5a.

We are concerned with the extension of the political theory of *Baker v Carr* and *Reynolds v Sims* into the field of local units of state government, as well as with the effect of such extension.

Jack V. Weinstein explores the effect in his article "The Effect of the Federal Reapportionment Decisions on Counties and other Forms of Municipal Government", 65 *Columbia Law Review* 21.

We do not agree with Mr. Weinstein's conclusions, stated at page 49. Neither do we agree with the Honorable Thurgood Marshall, Solicitor General, "* * * that, as a matter of constitutional principle, logic and sound policy, the principles of *Reynolds* apply to local governmental bodies whose members are elected from districts and re-

quire that those districts be substantially equal in population." Memorandum for the United States as Amicus Curiae in *Avery v. Midland County Texas*, 406 SW 2d 442, on Petition for a Writ of Certiorari to the Supreme Court of Texas, October Term, 1966, No. 958.

R. W. Nahstoll, writing in the American Bar Association Journal "The Role of the Federal Courts in the Reapportionment of State Legislatures", after *Baker v Carr*, concluded (50 American Bar Association Journal 842, at 847):

> "The hazard from diminution of state government is not primarily the risk of offense taken by the states on account of some vague 'invasion of sovereignty'. The hazard is that it will preclude or discourage pragmatic experimentation into political ways and means which characterizes a viable government. In an earlier day, the Court observed:
>
> > " 'The science of government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to the exigencies of the state as they arise. It is the science of experiment.' [*Anderson v Dunn*, 6 Wheat. (19 US) 204, 226.]
>
> "The significance of that experimentation was dramatically revealed by the talented British observer, James Bryce:
>
> > " 'It has been truly said that nearly every provision of the Federal Constitution that has worked well is one borrowed from or suggested by some State Constitution; nearly every provision that has worked badly is one which the Convention, for want of a precedent, was obliged to devise for itself.' [1 Bryce, American Commonwealth 35 (3d ed).]
>
> "Dicey once characterized the United States as 'A nation concealed under the form of a federation.'

[Dicey, Introduction to the Law of the Constitution, (9th ed 1939) App. 604] *Baker v Carr* moves inescapably to confirm that observation. It does more than move from the states to the Federal Government jurisdiction over problems now of national scope. It tends to undermine the health of state government, and its consequences should not be underrated."

If the Court applies the principles of *Reynolds* to the composition of local units of government, this will be the final move from the states to the federal government jurisdiction over matters which historically have been considered to be only of state concern and consequently the health of state government will be undermined.

In *Reynolds v Sims* and its progeny, the Court has entered the "political thicket" at the congressional and legislative levels. See Mr. Justice Frankfurter's remark in *Colgrove v Green*, 328 US 556, 90 L ed 1432, 66 S Ct 1198. The question now presented is whether the Court will invade this new political thicket and open a Pandora's box.

The cases before the Court do require "reflection on political theory" (50 American Bar Association Journal 842).

The Federal Courts should not be required "to review the manner of apportionment and constitution of each and every board and agency of the several states, cities, villages, counties, parishes, townships, metropolitan districts, and all other such policy and decision making bodies which are in existence for the purpose of carrying out the intent of the legislatures which authorize their creation" (*Sailors*, 254 F Supp 28).

As Judge Phillips in *Strickland* and Judge Roth in *Johnson* suggested, the Court should not assume that legislatures reapportioned on a constitutional basis will fail to correct any malapportionment that may exist in its arms, agencies and instrumentalities, when corrective measures are needed.

The Michigan legislature has been reapportioned on the one man one vote principle. As pointed out by Appellants, the Michigan school code does "authorize popular election of county school board members upon a favorable referendum vote within the county." Appellants' brief, page 15, Note 20 and Appendix E, pages 6a and 7a. However, Appellants complain that this provision is meaningless. This argument should be addressed to the Michigan legislature and not to this Court.

We urge the Court to forthrightly hold that the composition of local units of government is a state matter and not a subject within the jurisdiction of this Court or the Federal Courts and further that the one man one vote doctrine applies only to the composition of congressional districts and state legislatures.

CONCLUSION

Appellee The Board of Education of the County of Kent and the individual appellees as members thereof, urge the Court to affirm the order entered below dismissing the Complaint, as amended [R. 223, 224].

March 10, 1967.

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APPENDIX A

Strickland v. Burns,
256 F Supp 824, 836 (1966)

HARRY PHILLIPS, Circuit Judge (sitting as district judge by designation), (dissenting):

I do not agree that the "on man, one vote" rule applies to the Rutherford County School Commission, which is a local administrative agency created by the Legislature to administer the affairs of the county school system.

The Tennessee apportionment statute now provides for reapportionment of the Legislature upon the basis of population in accordance with Reynolds v. Sims, 377 U.S. 533, 74 S.Ct. 1362, 12 L.Ed. 2d 506, and Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663. Under the latest decision in Baker v. Carr, 247 F. Supp. 629 (M.D.Tenn.), the General Assembly which will be elected in November 1966 and which will convene on the first Monday in January 1967 will be a validly apportioned body under the "one man, one vote" rule.

In Tennessee a school board or district is an arm or instrumentality of government subject to the unlimited control of the Legislature. Taylor v. Taylor, 189 Tenn. 81, 222 S.W.2d 372; Kee v. Parks, 153 Tenn. 306, 309, 283 S.W. 751. It is "under the control of the legislature, so that it may be abolished, or its power may be enlarged or its responsibilities increased, at any time, by that body, without the danger of encountering constitutional difficulties." Edmondson v. Board of Education, 108 Tenn. 557, 561, 69 S.W. 274, 275, 58 L.R.A. 170. It has "no rights which the legislature may not subsequently modify or abrogate." Cunningham v. Broadbent, 177 Tenn. 202, 207, 147 SW.2d 408, 410; Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 53 S.Ct. 431, 77 L.Ed. 1015; City of Trenton v. State of New Jersey, 262 U.S. 182, 43 S.Ct. 534, 67 L.Ed. 937.

Further, the powers of the Rutherford County School Commission are administrative, not legislative, in character. It does not have the power of taxation, nor could such authority be delegated to it by the Legislature. Williamson v. McClain, 147 Tenn. 491, 249 S.W. 811; Waterhouse v. Cleveland Public Schools, 68 Tenn. 398. It is not authorized to adopt ordinances or otherwise exercise legislative powers. Although created by private statute, Chapter 426, Private Acts of 1943, its powers are controlled by the general school laws of the State, TCA, Title 49, by the General Education statute enacted biennially by the Legislature (see, e. g., Ch. 76, Public Acts of 1965; Ch. 39, Public Acts of 1963), and by rules and regulations promulgated by the State Board of Education.

We cannot assume that the Tennessee Legislature, which now has been reapportioned on a constitutional basis, will fail to correct any malapportionment that may exist in its arms, agencies and instrumentalities, when corrective measures are needed. I do not read Reynolds v. Sims, supra, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506, and Baker v. Carr, supra, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed. 2d 663, as construing the Fourteenth Amendment to require extension of the "one man, one vote" rule to *every* local election, and particularly the election of local agencies possessing no legislative powers. See Weinstein, The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government, 65 Colum.L.Rev. 21.

Once the Legislature is validly constituted, I do not believe there is a constitutional requirement that personnel of its subservient arms and agencies, created to perform purely administrative functions, must be elected on the "one man, one vote" basis.

In my opinion the election of members of the Rutherford County School Commission, in accordance with the private statute here involved, does not violate rights secured to plaintiffs by the Fourteenth Amendment. Glass v. Hancock County Election Commission, 250 Miss. 40, 156 So.2d 825, appeal dismissed, 378 U.S. 558, 84 S.Ct. 1910, 12 L.Ed.

2d 1035; Tedesco v. Board of Supervisors of Elections, La.App., 43 So.2d 514, appeal dismissed for want of a substantial federal question, 339 U.S. 940, 70 S. Ct. 797, 94 L.Ed. 1357; Lynch v. Torquato, 343 F.2d 370 (C.A.3); Moody v. Flowers, 256 F.Supp. 195, (M.D.Ala.); Johnson v. Genesee County, Michigan, 232 F.Supp. 567 (E.D.Mich.).

I would dismiss the complaint.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL., APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

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BRIEF FOR APPELLEE KENTWOOD PUBLIC SCHOOLS

QUESTIONS PRESENTED

1. Does the Michigan statute which provides for the selection of members of the county (intermediate) board of education by vote of a body composed of one member of the board of education of each constituent school district (whose members are popularly elected by school electors), deny the equal protection of the laws to the individual appellants, where neither the Michigan Constitution nor any state statute grants them the absolute right to vote for members of the county (intermediate) board of education?

2. Should the transfer of territory to appellee Kentwood Public Schools stand as the act of a de facto body, if the Court holds that Michigan county (intermediate) boards of education are malapportioned?

3. Does appellant The Board of Education of the City of Grand Rapids, as a municipal corporation, have privileges or immunities under the federal Constitution which it may invoke against its creator?

STATEMENT OF THE CASE

[This statement is abstracted from the stipulation of facts in the Transcript of Record, pages 121 through 194]

Appellee Kentwood Public Schools was created July 1, 1958, by the consolidation of 6 elementary school districts, to provide kindergarten through 12th grade education (R. 123, 124).

Prior to the political annexation and transfer of territory, which triggered this litigation, there had been 9 detachments of territory from Kentwood Public Schools by political annexations to the City of Grand Rapids under the Home Rule Act (§ 6, Act No. 279 of the Public Acts of 1909, as amended; 1948 Compiled Laws of Michigan, § 117.6; Michigan Statutes Annotated, § 5.2085), which territory, so politically annexed, became a part of appellant school district, without a vote of the school electors of appellee Kentwood Public Schools, by virtue of § 143 of The School Code of 1955 (CL 1948, § 340.143; MSA § 15.3143) which provided:

> "Whenever territory shall be annexed to a city comprising a school district of the second class, such territory, by such annexation, shall become and be part of the school district of that city."

From 1958 through December 31, 1962, there were 35 political annexations of territory to the City of Grand Rapids, which territory became a part of appellant school district, by operation of law (R. 124).

The 4 areas involved in this litigation comprised territory which became part of the Kentwood school district on consolidation July 1, 1958. These 4 areas, with a 1964 state equalized valuation for tax purposes of $5,370,000 [1966, $6,585,729], and upon which stands a modern, 14-classroom elementary school, were politically annexed to the City of Grand Rapids under the Home Rule Act, effective December 31, 1962 (R. 123, 134).

The 1962 Michigan Legislature repealed § 143. of The School Code by Act No. 171 PA 1962, and the act was approved by the Governor May 17, 1962. However, as the act was not given immediate effect, it did not take effect until March 28, 1963 (R. 125).

Because the repeal of § 143 did not save these 4 areas from becoming a part of appellant The Board of Education of the City of Grand Rapids, the Board of Education of Kentwood Public Schools on January 1, 1963, by proper resolutions, requested appellee the Board of Education of the County of Kent to transfer these 4 areas back to Kentwood Public Schools, under the transfer provisions of chapter 5, part 2, of The School Code (CL 1948, § 340.461, et seq; MSA § 15.3461, et seq), extracts from which are set forth in Appendix A (R. 126, 127).

Appellee the Kent County Board of Education held extensive hearings on the request and, at the final hearing February 6, 1963, it was publicly announced by the president of the county board of education that a decision would be rendered February 25, 1963 (R. 127, 128).

February 15, 1963, appellants James Sailors and Loretta Sailors, Seymour Koning and Mildred Koning, Grazzi Mullay and Rosalie Mullay, the original individual plaintiffs, and appellant The Board of Education of the City of Grand Rapids filed the complaint herein seeking to enjoin the county board of education from acting on the requested transfer, to declare the county board unconstitutionally constituted, to enjoin further elections until the malapportionment was brought into balance, and to declare the absence of any statutory standards governing the decisions of the county board violative of due process and an improper delegation of legislative authority. On filing the complaint Chief District Judge W. Wallace Kent entered an ex parte order restraining the county board from assuming jurisdiction of the requested tranfer and from rendering a decision thereon (R. 128, 129).

In the afternoon of February 25, 1963, on motion of Kentwood Public Schools, Judge Kent revoked the temporary restraining order, without prejudice to renew. That evening the county board adopted a resolution transferring

the 4 areas from appellant The Board of Education of the City of Grand Rapids to appellee Kentwood Public Schools (R. 129). The complaint was then amended to set aside the transfer.

A three-judge court was constituted to hear appellants' complaint and by order entered March 4, 1963, denied the motion of appellants to reinstate the restraining order and likewise denied their application for an interlocutory injunction at that time. Appellees' motions to dismiss the complaint were held in abeyance and the Court retained its jurisdiction "awaiting the plaintiffs' exercise of their administrative remedies provided by the Michigan Statutes, and, if they so choose, their application to the Supreme Court of Michigan for writ of certiorari to review the action of the state board of education" (R. 133).

Appellants (the original plaintiffs) appealed the order of transfer to the State Board of Education, pursuant to § 467 of The School Code of 1955, as amended (CL 1948, § 340.467; MSA § 15.3467), which section is set forth in Appendix A, *infra*, pp. 1a-2a (R. 133).

The State Board of Education, which has never been made a party to this litigation, was constituted by § 6, Article XI of the 1908 Constitution, the 4 members of which were elected at large by the people of the State (R. 133, 134). This section is set forth in Appendix E, *infra*, pp. 15a-16a.

June 5, 1963, the State Board of Education entered an order setting aside the action of appellee the Board of Education of the County of Kent taken February 25, 1963, and ordered that the territory involved be transferred from appellant The Board of Education of the City of Grand Rapids to appellee Kentwood Public Schools, except for the property owned and occupied by the original individual plaintiffs, appellants James Sailors and Loretta Sailors; Seymour Koning and Mildred Koning; Grazzi Mullay and Rosalie Mullay and two other lots owned by others (R. 134). For the full text of the order see R. 167-172.

Application to the Supreme Court of Michigan for leave to appeal the order of the State Board of Education was

not made and the order of the State Board of Education has become final (R. 134, 135).

Appellants William A. Duthler and Anna M. Duthler; Harvey A. Duthler and Edna Duthler intervened as parties plaintiff by order entered June 4, 1964 (R. 135). These appellants are school electors of Kentwood Public Schools (R. 135). The original individual plaintiffs, James Sailors and Loretta Sailors; Seymour Koning and Mildred Koning; Grazzi Mullay and Rosalie Mullay, are school electors of appellant school district and not of Kentwood, by reason of the order of the State Board of Education (R. 134).

Since February 25, 1963, when the ex parte temporary restraining order was revoked (R. 129) and appellee The Board of Education of the County of Kent ordered the transfer of the 4 areas (R. 129), appellee has exercised the powers and performed the duties granted and imposed on it by § 297 of The school code of 1955, as amended (R. 136, see Appendix B, *infra*, pp. 3a-6a) and since March 28, 1963, appellee, now known as the Board of Education of the Kent Intermediate School District (R. 121), has exercised the powers and performed the duties granted and imposed on it by § 298a of The school code of 1955, as added by Act 190 PA 1962 (R. 136, 137, see Appendix C, *infra*, pp. 7a-12a).

In addition to exercising such powers and performing such duties, appellee board after February 25, 1963, has entered 35 orders transferring territory between school districts within its jurisdiction under the statutory transfer powers [chapter 5, part 2 of The school code of 1955, as amended; CL 1948, § 340.461, et seq; MSA § 15.3461; Appendix A, *infra*, pp. 1a-2a (R. 137, 192, 193)].

• • •

The three-judge Court heard the case on the merits August 25, 1965; the opinions (254 F Supp 17, R. 198, 220) were filed May 2, 1966 and the order of dismissal was entered May 2, 1966 (R. 223).

SUPPLEMENTAL STATEMENT OF THE CASE

Appellants' Statement of the Case in their brief contains the following, at page 5:

> "The 0-19 school census taken annually in each local school district illustrates the relative size population-wise of the 40 local school districts within Kent County in 1963 and the 39 local school districts in 1964."

Appellants refer to the tabulations contained on pages 163 and 165 of the Transcript of Record.

We believe the Court should be advised that in 1964 the Michigan legislature adopted Act 289 of the Public Acts of 1964, which became effective August 28, 1964 [CL 1948, § 388.681 et seq; MSA § 15.2299(1) et seq], providing for the reorganization of school districts in the State of Michigan, the purpose of which as expressed in the act is to ultimately provide each child with at least 12 grades of education in his own school district.

May 25, 1966 Kent County voted favorably upon such a reorganization plan. See Appendix F, *infra*, pp. 17a-18a. The statute and plan so adopted are presently under constitutional attack in the Kent County Circuit Court. See Appendix G, *infra*, pp. 19a-20a. However, pending decision on the merits, the newly reorganized or created district is operating as a new district, and the former school districts so "reorganized" are dormant, under the order of the Honorable Fred N. Searl, Circuit Judge for the County of Kent. See Appendix G, *infra*, pp. 19a-20a.

Under the reorganization plan there are now only 21 operating school districts in the Kent County Intermediate School District. See Appendix H, *infra*, pp. 21a-23a.

Appellants in their brief at page 5 list 5 local school districts, their population, their vote for members of the county (intermediate) board of education and the population — variance ratio. Of the 5 school districts listed, namely, Ashley, Boyd, Hoag, Nelson Center and Grand

Rapids, only two are now operating, namely, Ashley and Grand Rapids. Nelson Center was annexed to Cedar Springs Public Schools (Nelson 5 Fractional) November 8, 1965. See Appendices I and J, *infra*, pp. 24a-26a. Boyd and Hoag were absorbed by the general reorganization vote.

ARGUMENT

I

The equal protection clause does not require apportionment of a Michigan county (intermediate) board of education on a one man one vote basis.

The one man one vote doctrine, enunciated in *Reynolds v Sims*, 377 US 533, 12 L ed 2d 506, 84 S Ct 1362, assumes that the one man has a constitutional or statutory absolute right to vote. Appellee contends that the individual appellants had and have no absolute right to vote for members of a Michigan county (intermediate) board of education, under the Constitution and laws of the State as historically interpreted and construed by the Supreme Court of Michigan.

(a) Historically in Michigan it has never been considered that the qualifications of school electors must be identical with those prescribed for general electors in the Constitution

In *Belles v Burr*, 76 Mich 1, 43 NW 24, it was held (76 Mich 11, 43 NW 28):

> "Viewing the question historically, it is apparent that for 50 years it has never been considered that the qualifications of voters at school-district meetings must be identical with those prescribed in the Constitution as qualifications of electors entitled to vote under that instrument. The authority granted by the

Constitution to the Legislature to establish a common or primary school system carried with it the authority to prescribe what officers should be chosen to conduct the affairs of the school-districts, to define their powers and duties, their term of office, *and how and by whom they should be chosen* (emphasis supplied).

"School-districts are regarded as municipal corporations. *School-district v Gage*, 39 Mich 484; *Seeley v Board of Education*, Id. 486. As such they preceded the Constitution (*Stuart v School-district*, 30 Mich. 69), and were recognized by that instrument (Const. 1835, Art. 10 § 3; Const. 1850, Art. 13, § 5). But no officer of the school-district is mentioned or recognized by that instrument. The reason is that the whole primary school system was confided to the Legislature, and it cannot be said that the officers of school-districts, chosen pursuant to the system adopted by the Legislature, are constitutional officers. The Constitution provided for no municipal subdivisions smaller than towns, except cities and villages, and it authorized the Legislature to incorporate these. Const. 1850, Art. 15, § 13."

After 127 years it has never been considered that the qualifications of Michigan school electors "must be identical with those prescribed in the Constitution as qualifications of electors entitled to vote under that instrument".

Although since 1951 (Act No. 257 PA 1951), the qualifications of Michigan school electors have been the same as those prescribed by the Constitutions of 1908 and 1963, such qualifications have been prescribed by the school code and not by the Constitutions. See Appendix D, *infra*, pp. 13a-14a for the qualifications of school electors found in the school code under the Michigan Constitutions of 1908 and 1963.

The rule of *Belles, supra*, has always been the law of Michigan.

(b) Education in Michigan belongs to the State. It is no part of the local self-governmental inherent in the township or municipality except so far as the Legislature may choose to make it such

In *Attorney General v Detroit Board of Education*, 154 Mich 584, 118 NW 606, the Supreme Court quoted with approval the opinion of the judges of the Wayne County Circuit Court, which, in part, was as follows (154 Mich 590, 118 NW 609):

> "Education in Michigan belongs to the State. It is no part of the local self-government inherent in the township or municipality, except so far as the Legislature may choose to make it such. The Constitution has turned the whole subject over to the Legislature. *Belles v Burr*, 76 Mich 1."

We quote from *MacQueen v Port Huron City Commission*, 194 Mich 328, 160 NW 627, as follows (194 Mich. 336, 160 NW 629):

> "Fundamentally, provision for and control of our public school system is a State matter, delegated to and lodged in the State legislature by the Constitution in a separate article entirely distinct from that relating to local government. The general policy of the State has been to retain control of its school system, to be administered throughout the State under State laws by local State agencies organized with plenary powers independent of the local government with which, by location and geographical boundaries, they are necessarily closely associated and to a greater or less extent authorized to cooperate. Education belongs to the State. It is no part of the local self-government inherent in the township or municipality except so far as the legislature may choose to make it such. *Belles v Burr*, 76 Mich 1 (43 NW 24); *Attorney General v Board of Education*, 154 Mich 584 (118 NW 606). The general school laws were carefully planned and enacted to guard that distinction; provision was made for organization of the common

> school districts, with officers elected at school meetings by electors with defined qualifications, and who as a school board were given large plenary powers and control of school matters, practically independent from the local government of municipalities in which the schools were situated."

Ruppert v Township School District, 252 Mich 482, 233 NW 387, quoting from *MacQueen, supra*, at page 336 (252 Mich 486-7, 233 NW 389); *Jones v Grand Ledge Public Schools*, 349 Mich 1, 84 NW 2d 327, also quoting *MacQueen, supra*, at page 5 (84 NW 2d 329) and *Lansing District v State Board of Education*, 367 Mich 591, 84 NW 2d 866.

See the Michigan constitutional provisions relating to education, Appendix E, *infra*, pp. 15a-16a.

(c) Historically the Michigan Legislature has prescribed that members of the boards of education of the various classifications of school districts be elected at large

In Michigan, in addition to a handful of school districts created by special acts of the legislature, known as special act school districts, there are 5 classifications of school districts, namely: primary school districts, fourth class school districts, third class school districts, second class school districts and first class school districts. The School Code of 1955, § 2; CL 1948, § 340.2; MSA § 15.3002. By statutory school census requirements, Detroit is the only first class school district and Grand Rapids and Flint are the only two second class school districts. The members of the boards of education of all 5 classifications of school districts are elected at large. This is recognized by District Judge Fox, in his dissent, when he said (254 F Supp 24, R. 211): "For even though members of local school districts are elected by popular election, the election of the 5 members of the Intermediate Board is by majority vote of the constituent school districts in the county, regardless of the respective populations of the several school districts."

(d) County (intermediate) school districts were first created in 1935, are state agencies distinct from the 5 classifications of local school districts and did not supersede or replace such school districts

County (intermediate) school districts were first created by Act No. 117 of the Public Acts of Michigan of 1935, known as "the County School District Act" (CL 1948, § 388.171, et seq, MSA § 15.161, et seq).

Section 2 of the 1935 act (CL 1948, § 388.172; MSA § 15.162) specifically provided that:

> "Said county school district shall include all the territory of the county but it shall not supersede nor replace any of the school districts organized and operating under laws enforced at the time of the passage of this act, nor shall it control or otherwise interfere with rights of said school districts, except as hereinafter provided in this act."

The statutory powers and duties of county (intermediate) school districts are set forth in full in Appendices B and C, *infra*, pp. 3a-12a, and are distinct from the powers and duties of constituent or local school districts of the classifications previously mentioned.

(e) In creating county boards of education, the Legislature, exercising its plenary power over education under the Constitution, did not provide for the popular election of members of the boards of education of such county school districts, except by referendum

In creating county school districts, the Legislature, acting under its plenary constitutional power, did not provide for the popular election of members of the boards of education of such county school districts. Rather, it was provided that the 5 members of each county board would be chosen at a meeting in the county of representatives

from each of the constituent local school districts. The statutory method of selecting board members is set forth in Appellants' brief, Appendix C, pages 2a through 5a. In 1962 the Legislature provided for a referendum on the popular election of members of intermediate boards of education. Act No. 190 of the Public Acts of 1962, effective March 28, 1963, as amended by Act No. 290 PA 1964 and Act No. 52 PA 1965 (§§ 294b through 294h, CL 1948 340.294b, et seq; MSA § 15.3294 (2), et seq. For the full text, see Appellants' brief, Appendix E, pages 6a and 7a.

It should be noted that two amendments have been made to the referendum provision. Appellants complain that the current referendum provision is "meaningless" (Appellants' brief, page 15, Note 20). This argument should be addressed to the Michigan legislature and not to this Court.

(f) A Michigan school elector does not have an absolute right to vote for members of county (intermediate) boards of education and the Legislature is the only body which can give such right

In the recent 1962 case of *Lansing District v State Board of Education, supra*, a transfer of territory between school districts was involved and one of the questions presented was the following (367 Mich 594, 116 NW 2d 868):

> "3. Is section 461 of the school code unconstitutional as denying to plaintiff the equal protection of the laws, in that it grants a vote on the question of transfer of territory to the district from which detachment is made, while denying a vote to the district to which the territory is transferred?"

In disposing of this question, Mr. Justice Kavanagh, writing for a unanimous court, held (367 Mich 599, 116 NW 2d 870):

> "The third question raised by plaintiff school district is whether section 461 of the school code of 1955 is unconstitutional as denying to plaintiff the equal

protection of the laws in that it grants a vote on the question of transfer of territory to the district from which detachment is made, while denying a vote to the district to which the territory is transferred.

"Plaintiff does not question that the authority to alter boundaries may be delegated without the consent of the inhabitants of the territory annexed or the municipality to which it is annexed, or even against its express protest. Its claim is that to deny one district a vote with reference to the transfer and permit a vote in the other district is to deny the equal protection of the laws contrary to the provisions of both the State and Federal Constitutions. These objections have been disposed of against plaintiff's contention by the following decisions, which we content ourselves with citing: *Hunter v City of Pittsburgh*, 207 US 161 (28 S Ct 40, 52 L ed 151); *Attorney General, ex rel Battishill v Springwells Township Board*, 143 Mich 523.

"In order to deny the equal protection of the laws contrary to the provisions of the State and Federal Constitutions, it would be necessary for the electors in plaintiff school district to have an absolute right to vote on the annexation question. The above mentioned decisions clearly indicate they do not have such a right. The legislature is the only body that could give plaintiff school district such a right. This it has omitted. Not being entitled to the right, the fact that it is given to one district and not to the other does not deny the equal protection of the laws contrary to the provisions of the State and Federal Constitutions."

The Michigan Legislature has not given the individual appellants the absolute right to vote for members of county (intermediate) boards of education. The legislature is the only body that could give appellants such right. This having been omitted, the individual appellants are not entitled to the right.

At least since *Belles, supra,* it has been the law of Michigan that the legislature, under the various Constitutions of Michigan, *has plenary power to determine how school board members should be chosen and upon what matters school electors could vote.* Whether a school elector has or has not the right to vote for members of a county (intermediate) school district is of State concern only.

(g) Gray v Sanders is not parrallel with the case at bar

Appellants argue that the Georgia county unit system struck down by *Gray v Sanders,* 372 US 368, 9 L ed 821, 83 S Ct 801, parallels the Michigan statutory method for the selection of members of county (intermediate) boards of education. See appellants' Question Presented in their Brief at page 3, et seq.

We quote from *Gray* as follows (372 US, at page 379; 9 L ed 2d, at page 829; 83 S Ct, at page 808):

> "Georgia gives every qualified voter one vote in a statewide election; but in counting those votes she employs the county unit system which in end result weights the rural vote more heavily than the urban vote and weights some small rural counties heavier than other larger rural counties."

The Michigan legislature did not give every school elector one vote or any vote in the selection of members of county (intermediate) boards of education.

As stated by Mr. Justice Black in *Fortson v Morris,* 385 US 231, at page 233, 17 L ed 2d 330, at page 332; 87 S Ct 446, at page 448:

> "This case [*Gray*], as was emphasized, had to do with the equal right of 'all who participate in the election', 372 US, at 379, 9 L ed 2d at 829, to vote and have their votes counted without impairment or dilution. But as the Court said, 372 US, at 378, 9 L ed 2d at 829, the case was *'only a voting case'* [emphasis supplied]. Not a word in the Court's opin-

ion indicated that it was intended to compel a state to elect its governors or any other state officers or agents through elections of the people rather than through selections by appointment or elections by the State Assembly. It is wrongly cited as having either expressly or impliedly decided that a state cannot, if it wishes, permit its legislative body to elect its Governor."

Like *Fortson*, the case at bar is not "a voting case", because school electors had no right to participate in the selection of county board members.

Michigan constitutional general electors may have voting rights at the local level protected by the equal protection clause, but school electors only have such right to vote as the legislature chooses to give them.

What triggered this litigation was the request of the board of education of the Kentwood Public Schools to have the Kent County Board of Education transfer back to it from appellant The Grand Rapids School District territory which became Kentwood's on original consolidation in July of 1958 (*supra*, page 2). This was after 9 areas had been previously detached from Kentwood by political annexations to the City of Grand Rapids (see *supra*, page 2).

The vehicle used by appellants in their attempt to void the transfer back to Kentwood was to claim malapportionment of the county board of education. Actually, this is a transfer or annexation case.

The extent to which this Court has gone in respecting the plenary power of a state legislature to change the boundaries of school districts at will, without the consent of the persons affected and even against their express protest, is perhaps best illustrated by *Attorney General v Lowrey*, 131 Mich 639, 92 NW 289, affirmed by this Court in 199 US 233, 50 L ed 167, 26 S Ct 27 and *Hunter v Pittsburgh*, 207 US 161, 52 L ed 151, 28 S Ct 40.

The Court held in *Hunter* (207 US 178, 52 L ed 159, 28 S Ct 46):

"Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it."

We are perfectly aware that *Lowrey* and *Hunter* were related in context to the due process clause and not to the equal protection clause, but the analogy is valid.

The question of equal protection was squarely presented to the Supreme Court of Michigan in *Lansing District v State Board of Education, supra,* at page 12, 367 Mich 591 and the Court answered at page 599-600:

> "In order to deny the equal protection of the laws contrary to the provisions of the state and federal Constitutions, it would be necessary for the electors in plaintiff school district to have an absolute right to vote on the annexation question. The above mentioned decisions clearly indicate they do not have such a right. The legislature is the only body that could give plaintiff school district such a right. This it has omitted. Not being entitled to the right, the fact that it is given to one district and not to the other does not deny the equal protection of the laws contrary to the provisions of the state and federal Constitutions."

The equal protection clause does not require apportionment of a Michigan county (intermediate) board of education on a one man one vote basis and the Court should affirm the order entered below dismissing the complaint, as amended.

II

Should the Court hold that Michigan county (intermediate) boards of education are malapportioned, the transfer of territory to appellee Kentwood Public Schools should stand as the act of a de facto body.

Appellants seek to strike down §§ 294 and 294a of the Michigan school code on the ground they are violative of the equal protection clause and appellants also seek to void the resolution adopted by appellee The Board of Education of the County of Kent on February 25, 1963, transferring the 4 areas to appellee Kentwood Public Schools (Appellants' Brief, page 19).

Should the Court strike down §§ 294 and 294a, appellee Kentwood Public Schools urges that the transfer should stand as the act of a de facto body.

Appellants become emotional in their argument that (Appellants' Brief, page 17):

> "They [appellants] are the victims of a vicious perversion of representative government, blatantly displayed in public session. A board member whose school district [not Kentwood] had filed a petition to further dismember the appellant school district actively participated in the emasculation of appellant district (R. 129). It was this series of shocking events that gave impetus to appellants to turn to the federal court for protection."

The truth is that from 1958 through December 31, 1962, there were 35 political annexations of territory to the City of Grand Rapids, which territory was taken from other school districts and became a part of appellant school district by operation of law without vote of the school electors in the school districts affected, (*supra*, page 2, R. 124).

From the time appellee Kentwood Public Schools was created July 1, 1958, by the consolidation of 6 elementary school districts, to provide kindergarten through 12th grade education, to the political annexation and transfer of territory which triggered this litigation, there had been 9 detachments of territory from Kentwood Public Schools by political annexations to the City of Grand Rapids, which territory, so politically annexed, became a part of appellant school district, without a vote of the school electors of appellee Kentwood Public Schools (*supra*, page 2).

When the Kent County board of education commenced hearings on the resolution of appellee Kentwood Public Schools to transfer the territory back, Mary Keeler was both a member of the board of education of appellant, and a member of the board of education of appellee. Counsel for appellee Kentwood Public Schools requested that Mary Keeler recuse herself from participating in the hearing, because of the obvious conflict of interests. This she refused

to do (R. 128). The vote of appellee The Board of Education of the County of Kent for the transfer was 4 to 1. It was Mary Keeler who voted against the transfer.

If § 143 of the school code of 1955 had not been repealed (*supra*, page 3), the truth is that appellee Kentwood Public Schools would have been destroyed as a high school district.

The resolution of the board of education of appellee Kentwood Public Schools requesting the transfer sets forth in detail the series of events which compelled that board to take action in self preservation (R. 30 through 39).

(a) At the time the transfer of territory was ordered, appellee county board was a de facto [if not de jure] body and its act of transfer is valid

The three judges composing the district court agreed unanimously that the transfer should stand. Judge Fox held (254 F Supp, at page 26):

> "Following the well established principle that the acts of a de facto body have full legal effect, the Court is not disposed to grant plaintiffs this facet of the relief they seek. The possible harm in setting a precedent of this sort, even on the facts of this case, is viewed as more to be shunned than the harm resulting to individual plaintiffs by allowing the transfer to stand. Orderly functioning of government demands no less. See *Johnson v. Genesee County*, 232 F Supp 567 (E.D. Mich, 1964); *Scholle v Hare*, 367 Mich 176, 116 NW 2d 350; *Williams v Secretary of State*, 145 Mich 447, 108 NW 749; and *State v Sylvester*, supra.
>
> "The preferable course is to allow a properly apportioned body to remedy whatever ills have come about by acts of its malapportioned state, and this is the policy which this court will follow."

Judges O'Sullivan and Kent concurred with Judge Fox, holding (254 F Supp, at page 28):

> "We find ourselves in a position where we concur with Judge Fox, writing for the Court, in reaching the conclusion that this Court will not overturn the acts of the de facto Kent Intermediate Board."

Yokley states (1 Yokley Municipal Corporations, § 19, pages 38 and 39):

> "A public or municipal corporation de facto exists where there is some law under which a corporation with powers assumed might have lawfully been created; a colorable and bona fide attempt to perfect an organization under such a law; and user of the rights claimed to have been conferred by that law.
>
> "For a de facto corporation to exist, there must be a valid statute authorizing incorporation, organization in good faith under such statute, colorable compliance with the statute, followed by the assumption of corporate powers. The doctrine of de facto municipal jurisdiction is not predicated on a valid legislative enactment, but on a presumptively valid enactment that is subsequently judged to be invalid, but under which the municipality exercises jurisdiction and rights are acquired on the assumption that the enactment is valid."

Mr. Justice Souris, concurring with the majority decision in *Scholle v Secretary of State*, 367 Mich 176, 116 NW 2d 350, that the provisions of the Michigan Constitution setting forth districts for the election of state Senators denied equal protection, said (367 Mich, at pages 244 and 245):

> "The Chief Justice, relying upon *Norton v Shelby County*, 118 US 425 (6 S Ct 1121, 30 L ed 178), and citing *Carleton v People*, 10 Mich 250; *People v. Payment*, 109 Mich 553; and *Kidd v McCanless*, 200 Tenn 273 (292 SW 2d 40), asserts that by our ruling that the 1952 amendments are void, 'the senatorial districts created thereby become nonexistent' and conse-

quently, he concludes that the incumbents cannot act as de facto officers in the absence of de jure offices. Presumably, it would follow from his conclusion, there being no de jure nor de facto State senators following our judgment today, either that the full legislative power of the State resides exclusively in the house of representatives which may alone legally enact the necessary laws to effectuate the Court's judgment, or that the whole legislative process is suspended for lack of a validly existing senate. The prospect of an unicameral legislature even for only the time it may take to establish new senatorial seats pursuant to the Constitution, presents a heady temptation for judicial experimentation. The other prospect, which one of my Brothers earlier characterized as an 'argument in terrorem' is not a practical possibility so long as this Court exercises responsibly its authority. I know of no constitutionally responsible court in the land which ever has, or would, countenance such a chaotic result, — and, certainly, there is no compelling reason for us to lead the way.

"The de facto doctrine is another of our legal fictions by which the law manages somehow to preserve orderly governmental procedures when by some legal defect invalidating one's title to public office, his otherwise valid acts will be upheld by the courts. Otherwise, all who have business to transact with public officials would be compelled to ascertain their status as de jure officials at pain of invalidity of acts done under color of title to office. The doctrine has a salutary effect, thus broadly stated, but its obvious beneficial effect has been limited by some courts which have said that the doctrine does not apply where there is no de jure office. Norton v Shelby County, supra, relied upon by the Chief Justice, is such a case but, like others so limiting the doctrine, it involved a situation where an office was attempted to be created, by act subsequently declared invalid, to perform duties constitutionally delegated to another office. Limitation of the doctrine in such cases settles what is fundamentally

a dispute between 2 contenders for public power — one a de jure and the other a de facto officer. In the absence of such conflict, where the only question is whether validity is to be given to the acts of a de facto officer whose office is found to have been illegally created, there appears to be no reason in logic or law to so restrict or otherwise limit application of the legally convenient de facto doctrine."

For other Michigan cases not cited by Judge Fox, see *Carlisle v City of Saginaw*, 84 Mich 134, 47 NW 444; *Giddings v Secretary of State*, 93 Mich 1, 52 NW 944; *People v Payment*, 109 Mich 553, 67 NW 689; and *People v Russell*, 347 Mich 193, 79 NW 603.

The Tenth Circuit Court of Appeals in *Town of Maysville, Oklahoma v Magnolia Petroleum Co.*, 272 F 2d 806, at page 811, stated the de facto doctrine as follows:

"The courts do not agree on when a municipal corporation is so utterly void in its inception as to be incapable of de facto recognition. McQuillin, Munic. Corp., § 3.48. But the policy of the law strongly favors legal recognition of the de facto existence of a corporation. Indeed, the importance of stability and certainty in matters involving corporate franchises has prompted one court to hold that 'The fact that the organization was so defective as to be void in its inception does not change the rule. There is no room or place here for distinction between things that are voidable and things that are void. Neither the nature nor the extent of the illegality in organization can affect the application of these principles * * *.' *Bowman v City of Moorhead*, 228 Minn 35, 36 NW 2d 7, 9, 7 ALR 2d 1401. The extreme reluctance of the courts to declare the legal nonexistence of a corporation which actually does exist as a corporate entity, is reflected in the numerous cases involving private capacity to attack the fixing or extension of municipal limits or boundaries. See Annotation 13 ALR 2d 1279."

See also *Tulare Irrigation District v Shepard*, 185 US 1, commencing at page 13; 46 L ed 773, commencing at page 780, 22 S Ct 531, commencing at page 536.

Since the order of transfer February 25, 1963, the Appellee county board of education has ordered 35 transfers of territory (*supra*, page 5), in addition to exercising the powers and performing the duties granted to and imposed on it by the statutes (*supra*, page 5).

In the congressional and legislative apportionment cases decided by the Court, since *Baker v Carr*, the Court has never turned the clock back and stopped the functioning of government pending reapportionment on a constitutional basis and the Court should not do so now.

An example of this principle is found in the cases involving the Georgia General Assembly. Appellants have pointed out in their brief that in *Toombes v Fortson*, 384 US 210, 86 S Ct 1464, 16 L ed 2d 482, affirming 241 F Supp 65, the Court held that the General Assembly could continue to function until May 1, 1968, despite the fact that it was unconstitutionally malapportioned. Subsequently, in *Fortson v Morris*, *supra* (385 US 231, at page 14 of our brief), the majority of this Court held that it was constitutional for the General Assembly to elect the Governor of the state even though the General Assembly was malapportioned, since it was a de facto body. Appellants argue, by using a strange and backwards type of logic, that such a body has more right to a de facto status than the Kent County Board of Education which has never been declared, either directly or indirectly, by any court to be unconstitutionally composed. Furthermore, the act of transfer complained of in the case at bar was 4 years ago, 1½ years before *Reynolds v Sims*, and the companion cases, for the first time enunciated the one man one vote principle, and even several weeks before (February 25, 1963 to March 18, 1963) *Gray v Sanders* was decided. At the time of the action of February 25, 1963, by the Kent County Board of Education, even appellants make no claim that any decision enunciated by this Court had any bearing upon the constitutionality of the composition of such a body

as the Kent County board. The only apportionment decision at that time was *Baker v Carr*. That case, as we understand it, decided 3 things and no more: 1) that the Court possessed jurisdiction of the subject matter; 2) that a justiciable cause of action was stated; and 3) that the appellants had standing to challenge the Tennessee apportionment statutes. To say that the board at that time was not a de facto body is not only contrary to any apportionment decision made by this court or by any federal or state court up to the present time, but also opens up an incredible Pandora's box. Probably every act passed by almost every elective body in state or local government up to that time and later could be declared null and void on the same grounds. Chaos would result from any such decision. All past actions of the Kent County board, including the one complained of, are the acts of a de facto body.

Should the Court hold that Michigan County (Intermediate) boards of education are malapportioned, we urge the Court to specifically affirm the unanimous decision of the District Court and hold that the transfer stands as the act of a de facto body.

(b) The act of the State Board of Education, on appeal by appellant school district, in reversing the county board of education and transferring certain but not all of the territory requested, was the act of a de jure body

Appellant school district appealed the county board's order to the State Board of Education, under the provisions of § 467 of the school code (*supra*, page 4; see Appendix A, *infra*, page 1a-2a).

The State Board of Education was constituted by § 6, Article XI of the 1908 Constitution, the 4 members of which were elected at large by the people of the State (*supra*, page 4 and Appendix E, *infra*, pages 15a-16a) and has never been a party to the suit (*supra*, page 4).

The ex parte temporary restraining order originally issued by Judge Kent [later revoked] enjoined only the county board of education from acting on the requested transfer until further elections brought the malapportionment into balance (*supra*, page 3).

Under the appeal statute, the Kentwood board of education or any resident owner of land in either the Kentwood district or the Grand Rapids district, could have appealed to the State Board of Education, if there had been no action on the resolution requesting transfer by the county board within 60 days of the receipt of the resolution, *notwithstanding the restraining order*. See Appendix A, §§ 461 and 467, *infra*, page 3. The act of the State Board of Education was an independent act and the order of the State Board of Education entered June 5, 1963 (R. 167) was the act of an unquestioned de jure body and should be sustained as such.

III

Appellant The Board of Education of the City of Grand Rapids does not have standing, because as a municipal corporation, it does not have privileges or immunities under the Federal Constitution which it may invoke against its creator.

Appellant The Board of Education of the City of Grand Rapids is a school district of the second class, organized and existing under the provisions of chapter 5, part 1 of The School Code of 1955, as amended (CL 1948, § 340.141, et seq; MSA § 15.3141, et seq) and is a municipal corporation (*Attorney General ex rel McRae v Thompson*, 168 Mich 511, 134 NW 722), created by the State of Michigan for the better ordering of education in the State, and, as such, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of the State.

In *Williams v Baltimore*, 289 US 36, 77 L ed 1015, 53 S Ct 431, where the question was squarely raised, the Gen-

eral Assembly of Maryland adopted a statute exempting the property of a particular railroad from taxation. The mayor and City Council of Baltimore, and the mayor, counselor and aldermen of the City of Annapolis, municipal corporations, challenged the statute as invalid under the Fourteenth Amendment to the Constitution of the United States.

Mr. Justice Cardozo, in delivering the unanimous opinion of the court, disposed of this question in 2 one sentence paragraphs as follows (289 US 40, 77 L ed 1020, 53 S Ct 432):

> "1. There is error in the holding of the Circuit Court of Appeals that the statute of Maryland creating this exemption is a denial to the respondents of the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.
>
> "A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator. (Citing cases)."

Coleman v Miller, 307 US 433, 441, 83 L ed 1385, 1390, 59 S Ct 972, 976; *City of Houston v State,* 142 Tex 190, 176 SW 2d 928, appeal dismissed for want of substantial federal question, citing *Williams,* 322 US 711, 88 L ed 1554, 64 S Ct 1159.

In *Lansing District v State Board of Education,* 367 Mich 591, 116 NW 2d 866, Mr. Justice Kavanagh, writing for a unanimous Court, held (367 Mich 600, 116 NW 2d 870):

> "We do not believe plaintiff (The School District of the City of Lansing) is a proper party to raise the question of whether or not its residents have the right to vote on the transfer. This right, if existing at all, would exist in the voters and not in the school district. Plaintiff school district is an agency of the

> State government and is not in a position to attempt to attack its parent. The question of how and where individuals would vote is a question between the individuals themselves and the government."

Title 42 United States Code § 1983 grants a civil action for deprivation of rights to "every person". *Monroe v Pape*, 365 US 167, 191, 5 L ed 2d 492, 507, 81 S Ct 473, 486, squarely holds that a municipal corporation is not a "person" within the meaning of § 1983. See also *Egan v City of Aurora*, 365 US 514, 5 L ed 2d 741, 81 S Ct 684.

District Judge Fox, in his dissenting opinion, correctly recognized this lack of standing on the part of appellant The Board of Education of the City of Grand Rapids, when he said (254 F Supp, at page 27):

> "The rights involved in this case being voting rights, and as such, personal, plaintiff Board of Education of the City of Grand Rapids and intervening plaintiff City of Grand Rapids are held to have insufficient standing to remain as parties to this action." [The City of Grand Rapids is not a party to this appeal].

Clearly, appellant The Board of Education of the City of Grand Rapids has no standing on this appeal and should be dropped as an appellant.

CONCLUSION

We urge on behalf of Appellee Kentwood Public Schools that:

1. The order entered below dismissing the complaint, as amended, be affirmed; or

2. If the Court strikes down §§ 294 and 294a of the Michigan school code as violative of the equal protection clause, the Court specifically affirm the unanimous decision of the District Court that the transfer of territory stands

as the act of a de facto body and the order of the State Board of Education was the act of a de jure body; and

3. The Court hold that appellant The Board of Education of the City of Grand Rapids has no standing.

Respectfully submitted,

March 17, 1967.

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APPENDIX A

EXTRACTS FROM MICHIGAN STATUTORY PROVISIONS WITH REFERENCE TO THE TRANSFER OF TERRITORY BETWEEN SCHOOL DISTRICTS

Section 461 of The School Code of 1955 as amended; 1948 Michigan Compiled Laws, § 340.461; Michigan Statutes Annotated, §15.3461

Transfer of territory between districts; resolution or petition, period for final action; approval by electors. Sec. 461. The county board of education may, in its discretion, detach territory from 1 district and attach it to another when requested to do so by resolution of the board of any district whose boundaries would be changed by such action, or when petitioned by not less than ⅔ of the resident owners of the land to be transferred. The county board of education shall take final action in regard to the resolution or petition within a period of 60 days of the receipt of the resolution or petition. Only territory contiguous to a district may be transferred. Whenever the latest available taxable valuation of the area to be detached is more than 10% of the latest available taxable valuation of the entire school district from which it is to be detached, the action of the county board of education directing such detachment shall not be valid unless approved, at an annual or special election called for that purpose in the district from which the detachment is to be made, by an affirmative vote of a majority of the school tax electors of the district, voting thereon.

Section 462 of The School Code of 1955; 1948 Michigan Compiled Laws, § 340.462; Michigan Statutes Annotated, § 15.3462

Same; notice of hearing, posting, publication. Sec. 462. The county superintendent of schools shall give at least 10 days' notice of the time and place of the meeting of the county board of education and of

the proposed alteration in school district boundaries to be considered at said meeting, by posting such notice in at least 5 public places in each of the districts whose territory may be affected by such alteration and by publication at least once prior to such meeting in a newspaper of general circulation in the territory of the affected districts.

• • •

Section 467 of The School Code of 1955, as amended; 1948 Compiled Laws of Michigan, § 340.467; Michigan Statutes Annotated, § 15.3467

Same; appeal to state board of education. Sec. 467. Any one or more resident owners of land considered for transfer from 1 district to another, or the board of any district whose territory is affected, may appeal the action of the county board of education or joint boards in transferring such land, or the failure to transfer such land, or the action taken relative to the accounting determination, to the state board of education within 10 days after such action or determination by the county board of education or the joint boards. If the county board of education or the joint boards fail to take action within the time limit prescribed in section 461, the appeal may be made to the state board of education within 10 days following the termination of the period. Such appeal shall have the effect of holding the effectiveness of the resolution from which appealed in abeyance until the appeal is acted upon by the state board of education.

The state board of education is hereby empowered to consider such appeals and to confirm, modify or set aside the order of the county board of education or the joint boards and its action on any such appeal shall be final.

APPENDIX B

Powers and duties of the county board of education under the provisions of § 297 of the school code of 1955, as amended (CL 1948, § 340.297; MSA § 15.3297).

SEC. 297. The powers and duties of the county board of education shall be as follows:

(a) To receive from the county treasurer such reports of delinquent taxes due school districts as this official is required by law to file with township and city clerks and to compute from such report the amount of delinquent school taxes due each school district in the county. The county treasurer of each county shall, at the time of making monthly settlements with the several township and city treasurers of the county, file with the secretary of the county board of education a statement of all delinquent school taxes which are included in the amounts sent by the county treasurer to the several township and city treasurers of the county, together with the descriptions upon which these delinquent school taxes shall have been paid. The county board of education shall, upon receipt of such statements, compute the amount of delinquent school taxes and interest thereon included in such statement that shall be due each school district of the county and shall, within 30 days from receiving the statement from the county treasurer, give notice to the secretary of each school board of the county of the amount of delinquent school taxes and interest thereon that belongs to his district and which was included in the amount sent by the county treasurer to the treasurer of the township or city in which his district is located.

(b) To recommend the purchase of library books for all school libraries and of all instructional equipment in school districts not employing a superintendent of schools.

(c) To employ a county superintendent of schools and such assistants, including in its discretion a deputy, as it shall deem necessary for the best interest of the county

and to fix the compensation for the same except as otherwise provided in section 300 of this act. That part of the compensation of the county superintendent of schools as is paid from county funds and the compensation of the deputy and assistants which shall include salaries and traveling expenses incurred in the discharge of their official duties and the necessary and contingent expenses of the office of the county board of education and the county superintendent of schools for printing, postage, stationery, record books, equipment, office and telephone rental, rent of rooms for teachers' or school officers' meetings, pupils' mental and achievement tests, expenses incurred in the health and social service program of the office, and elections conducted by the county board of education, shall be paid by the county treasurer after the same have been authorized by the county board of education from such amounts as may be appropriated therefor by the county board of supervisors. The county board of education shall employ and contract with for a term of not to exceed 4 years a county superintendent of schools who shall have the qualifications and perform the duties as provided in this act. On or before the close of each term, or sooner if there should be a vacancy, the superintendent's successor shall be employed as herein provided.

(d) Each county board of education shall make or cause to be made a map of the county, showing by district lines thereon the boundaries of each school district and parts of school districts therein, if such school districts exist, and shall number the same thereon as established by proper authority. One copy of such map shall be filed in the office of the county superintendent of schools, 1 copy shall be filed with the supervisors of the respective townships, and 1 copy shall be filed in the office of the superintendent of public instruction. If any division or alteration is at any time made in the boundary lines of any district the county board of education shall, within 1 month thereafter, file a new map and copies thereof as aforesaid showing such changes.

(e) The county board of education shall cause to be taken an annual school census by the agency and in the

manner provided in chapter 30, part 2 of this act, in each and every school district within the provisions of this act.

(f) The county board of education shall make out an annual budget showing the total amount required to carry on the lawful activities of the county board of education, which amount shall be assessed and collected at the same time and in the same manner as other county taxes are assessed and collected and paid out by the proper authorities of said county upon the direction of the county board of education.

(g) The county board of education shall be empowered to furnish services on a consultant or supervisory basis to any school district employing a superintendent of schools upon request of the board of education of that district

(h) The county board of education shall be empowered to employ teachers meeting the qualifications as set up by the state board of education and the superintendent of public instruction for serving speech defective children, hard of hearing children who need lip reading training, and homebound children of normal mentality: Provided, That no school district other than the county district is able or is willing to provide such services; And provided further, That such programs are previously approved by the superintendent of public instruction. Such programs when approved may be reimbursed in accordance with the provisions of chapter 17 of part 2 of this act.

(i) The county board of education shall be empowered to direct, supervise and conduct cooperative education programs within the county in behalf of school districts which request such services from the county board of education. The county board of education is empowered to utilize any available funds, appropriated by the county board of supervisors for that purpose or allocated by boards of education of the cooperating school districts, and to accept contributions from other sources, for the purpose of financing the programs. Such funds shall be deposited with the county treasurer through the county superintendent of schools in a special fund and shall be disbursed as the

county board of education shall direct. Notwithstanding any other provision of law, the county board of supervisors is hereby authorized to appropriate, and the boards of education of the various school districts are hereby authorized to allocate, available funds not otherwise obligated by law, for such educational programs. The county board of education shall have power to employ teachers and take any other action necessary to direct, supervise and conduct such educational programs.

APPENDIX C

Powers and duties of the board of education of intermediate school district under the provisions of § 298a of the school code of 1955, as added by Act No. 190 PA 1962, effective March 28, 1963 (CL 1948, § 340.298a; MSA 15.3298 (1)).

Same; powers and duties.

SEC. 298a. (1) The board shall:

Statutes; Superintendent of public instruction; Constituent districts.

(a) Perform such duties as required by law and by the superintendent of public instruction, but shall not supersede nor replace the board of education of any constituent school district, nor shall it control or otherwise interfere with the rights of constituent districts except as provided in this chapter.

Superintendent and other personnel; compensation, expenses, supplies, equipment, service.

(b) Employ a superintendent and such assistants, including, in its discretion, a deputy, as it deems necessary for the best interest of the district and fix the compensation for the same. The compensation of the superintendent and his deputy and assistants, which shall include salaries and travel expenses incurred in the discharge of their official duties and the necessary contingent expenses of the office of the board and the superintendent for printing, postage, stationery, record books equipment, office and telephone rental, rental of rooms for teachers, or school officers' meetings, pupils' mental and achievement tests, expenses incurred in the health and social service program of the office, elections conducted by the board, expenses incurred by the board in the legal performance of its duties, expenses incurred for heat, light, electricity, insurance, buildings and grounds maintenance, per diem of board members, and their expenses incurred in traveling in the discharge of their official duties, reference books,

professional journals, instructional supplies and equipment, legal fees, janitorial supplies and equipment, shall be paid by the treasurer, after the same have been authorized by the board, from such amounts as have been levied and collected therefor by the county board of supervisors and from any other available funds. The board shall employ and contract for a term of not to exceed 4 years, a superintendent who shall have the qualifications and perform the duties as provided in this chapter. On or before the close of each term, or sooner if there is a vacancy, the superintendent's successor shall be employed as herein provided.

Budget, preparation, filing.

(c) Prepare an annual general budget which shall be in the same form as that provided for other school districts. On or before March 1 of each year the board shall submit such budget to a meeting of 1 school board member named from each constituent school district to represent such a district. At such meeting the president of the intermediate district board shall preside, the secretary shall keep the minutes and the representatives of constituent district boards shall by majority vote determine the maximum amount of the intermediate district general budget but shall not make final determinations as to line items in such a budget. Following such meeting the intermediate district board shall file its budget, the maximum amount of which shall not exceed that approved by the school board representative of constituent districts, with the county clerks of the counties in which it has territory. Each county clerk receiving the budget shall deliver it to the tax allocation board in the same manner as other school district budgets are handled.

Tax allocation board, certificate of rate.

The tax allocation board shall receive the budgets from its county clerk, shall treat them as other school district budgets are treated and shall allocate tax rates to intermediate school districts for the purposes set forth in this act. When the intermediate district board has received an allocation on the basis of its budget, it shall certify

for collection to the city and township officials concerned a statement of the amount of taxes to be levied, which certification shall be made at the same time and in the same manner as that of other school districts. The rate certified for levy shall not exceed the amount allocated.

Levy and collection of taxes.

On receipt of the statement from such board, the city and township officials responsible for the levying and collection of taxes shall spread on the tax roll an intermediate school district tax equal to the amount ordered spread, and shall collect such taxes in the same manner as other taxes are collected.

Payments to treasurer of the board.

Taxes collected under the provisions of this chapter shall be paid over to the county treasurer in the same manner as other county taxes are paid over, and similar accounts and records shall be kept. The county treasurer shall pay over all funds received under this act to the treasurer of the board. County treasurers of counties in which fractions of the intermediate school districts operating under this act are situated shall pay over those funds collected under the act to the treasurer of the board.

Taxes, assessment and levy, collection; budgets.

Intermediate school district taxes shall be assessed, levied and collected as provided in Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 to 211.157 of the Compiled Laws of 1948. Budgets shall be submitted and intermediate school districts shall be governed by the provisions of Act No. 62 of the Public Acts of 1933, as amended, being sections 211.201 to 211.217a of the Compiled Laws of 1948.

Delinquent taxes, report.

(d) Receive from the county treasurer such reports of delinquent taxes due school districts as he is required by law to file with township and city clerks and compute from such report the amount of delinquent school taxes due each school district in the county. The county treasurer

of each county, at the time of making monthly settlements with the several township and city treasurers of the county, shall file with the secretary of the board a statement of all delinquent school taxes which are included in the amounts sent by the county treasurer to the several township and city treasurers of the county, together with the descriptions upon which the delinquent school taxes have been paid. The board, upon receipt of such statements, shall compute the amount of delinquent school taxes and interest thereon included in the statement which are due each school district of the county and, within 30 days from receiving the statement from the county treasurer, shall give notice to the secretary of the board of education of each school district of the amount of delinquent school tax and interest thereon that belongs to his district and which was included in the amount sent by the county treasurer to the treasurer of the township or city in which his district is located.

Maps, filing.

(e) Prepare a map of the intermediate district annually as of July 1, showing by distinct lines thereon the boundaries of each constituent school district. One copy of such map shall be filed in the office of the superintendent, 1 copy shall be filed with each of the supervisors of the respective townships, and 1 copy shall be filed in the office of the superintendent of public instruction, and 1 copy shall be filed in the office of the secretary of state.

School census.

(f) Cause an annual school census to be taken by the agency and in the manner provided in sections 941 to 948 of this act, in each and every school district within the provisions of this chapter.

Consultant or suprevisory services.

(g) Furnish services on a consultant or supervisory basis to any constituent school district upon request of that district.

Employment of teachers for special education programs, reimbursement.

(h) Employ teachers meeting the qualifications as set up by the state board of education and the superintendent of public instruction for serving speech defective children, hard of hearing children who need lip reading training, mentally retarded, physically handicapped, emotionally distressed, homebound children of normal mentality and any other atypical children if the programs are previously approved by the superintendent of public instruction, and if no school district other than the intermediate district is able and willing to provide such services. The district, when the programs have been approved by the superintendent of public instruction, may be reimbursed in accordance with the provisions of sections 771 to 780 * * *.

Cooperative educational programs; funds.

(i) Direct, supervise and conduct cooperative educational programs in behalf of the constituent school districts which request such services. The board may utilize any available funds not otherwise obligated by law, and accept contributions from other sources, for the purpose of financing the programs. The funds shall be deposited with the treasurer in a special fund and shall be disbursed as the board of education shall direct. Notwithstanding any other provision of law, the board of supervisors may appropriate, and the boards of education of the constituent school districts may allocate available funds not otherwise obligated by law, for such educational programs. The board may employ teachers and take any other action necessary to direct, supervise and conduct such educational programs.

Same; conduct with other intermediate districts.

(j) Conduct cooperative programs mutually agreed upon by the boards of 2 or more intermediate school districts.

Schools for juvenile court wards.

(k) When directed by the board of supervisors, establish, if the board deems necessary, a school for those per-

sons of school age who are housed in children's homes operated by the juvenile court or who are living at home but assigned to such school by a juvenile court. The board of education may lease or purchase sites for such schools, build, lease or rent housing facilities for such schools, may employ such teaching and supervisory staff as is necessary to operate such schools, is authorized to make rules and regulations covering the operation of such schools, may exclude students for reason of persistent misbehavior, or bodily conditions and habits disturbing to the orderly conduct of the school, is authorized to classify and promote students for instructional purposes, and otherwise do all those things necessary to the proper conduct of such a school.

Sites and building facilities.

(1) The board of education may lease or purchase sites, build, lease or rent such facilities as may be necessary for its staff.

Administration of oaths.

(2) Any member of the board may administer oaths for the qualifying of board members and oaths required in any other transaction connected with, or related to, the educational program of the intermediate school district.

Board of canvassers, appointment.

(3) The intermediate school district board shall appoint a board of canvassers in accordance with the provisions of section 514a.

APPENDIX D

THE QUALIFICATIONS OF SCHOOL ELECTORS

Chapter 4, part 2, of The School Code of 1955, as last amended by Act No. 257 of the Public Acts of 1951, with reference to school elections and the qualifications of school electors under the 1908 Constitution, provided as follows:

School electors; qualifications. Section 1. A school elector shall possess the qualifications provided for qualified electors in section 1, article 3 of the constitution (1908): Provided, That upon questions involving the direct expenditure of public moneys or the issue of bonds, school electors shall possess the qualifications provided in section 4 of article 3 of the constitution: Provided further, That no person shall vote in any school election unless he shall have resided within the school district at least 30 days next preceding said election. (C.L. '48, § 354.1; C.L. '29, § 7410.)

Chapter 7, part 2, of The School Code of 1955, as amended, with reference to school elections and the qualifications of school electors under the 1963 Constitution, provides as follows:

School electors, qualifications; repeat elections on proposals. (M.S.A. 15.3511)

Sec 511. A school elector shall possess the qualifications provided for qualified electors in section 1 of article 2 of the constitution (1963) and statutes enacted thereunder. Upon questions involving the increase of the ad valorem tax limitation imposed by section 6 of article 9 of the constitution for a period of more than 5 years or the issue of bonds, school electors shall possess the qualifications provided in section 6 of article 2 of the constitution. No person shall vote in any school election unless he shall have resided within the school district at least 30 days next preceding the election. The same question or measure involving consolidation of school districts, annexation of entire districts, annexation or transfer of a portion of 1 school district to another, or bonding of school districts,

shall not be submitted to the voters of any school district more often than once in 6 months, unless the board is presented with a petition requesting the board to call another election and signed by qualified school electors of the district to the number of not less than 50% of the registered general electors residing in the district as of the date the petition is presented to the board. Any city or township clerk shall certify to the intermediate school district superintendent of schools the number of registered general electors residing in a school district when requested by the intermediate school district superintendent, who shall make the information available to the board of the district.

APPENDIX E

MICHIGAN CONSTITUTIONAL PROVISIONS RELATING TO EDUCATION

1908 Michigan Constitution, Article XI, Education

Encouragement of education. Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

* * *

State board of education; election; powers and duties. Sec. 6. The state board of education shall consist of four members. On the first Monday in April, nineteen hundred nine, and at each succeeding biennial spring election, there shall be elected one member of such board who shall hold his office for six years from the first day of July following his election. The state board of education shall have general supervision of the state normal college and the state normal schools, and the duties of said board shall be prescribed by law.

* * *

Primary school system. Sec. 9. The legislature shall continue a system of primary schools, whereby every school district in the state shall provide for the education of its pupils without charge for tuition; and all instruction in such schools shall be conducted in the English language. If any school district shall neglect to maintain a school within its borders as prescribed by law for at least five months in each year, or to provide for the education of its pupils in another district or districts for an equal period, it shall be deprived for the ensuing year of its proportion of the primary school interest fund. If any school district shall, on the second Monday in July of any year, have on hand a sufficient amount of money in the primary school interest fund to pay its teachers for the next ensuing two years as determined from the pay roll of said district for the last school year, and in case of a primary district, all tuition for the next ensuing two years, based upon the then

enrollment in the seventh and eighth grades in said school district, the children in said district shall not be counted in making the next apportionment of primary school money by the superintendent of public instruction; nor shall such children be counted in making such apportionment until the amount of money in the primary school interest fund in said district shall be insufficient to pay teachers' wages or tuition as herein set forth for the next ensuing two years.

• • •

1963 Michigan Constitution, Article VIII, Education

Encouragement of education. Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Free public elementary and secondary schools; discrimination. Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

Convention comment.

This is a revision of Sec. 9, Article XI, of the present (1908) constitution which fixes responsibility on the legislature to provide "primary" education. To conform to present practice and court interpretations, "primary" is changed to "elementary and secondary." The balance of the section is excluded because its restrictions as to finance and definitions as to basic qualifications needed to be eligible for state aid are better left to legislative determination.

The anti-discrimination clause is placed in this section as a declaration which leaves no doubt as to where Michigan stands on this question.

Note: The convention comment above is quoted from Volume 1, Michigan Statutes Annotated, 1965 Revised Volume at page 615.

APPENDIX F

AFFIDAVIT

STATE OF MICHIGAN)
)
COUNTY OF KENT)

ROSCOE C. MINER, Superintendent of the Kent Intermediate School District, being duly sworn deposes and says:

(1) Following is a true statement of the canvass of the election held on the 25th day of May, 1966 in the Kent Intermediate School District on the following question:

SHALL THE APPROVED REORGANIZATION PLAN FOR THE KENT INTERMEDIATE SCHOOL DISTRICT BE ADOPTED?

Upon a canvass of votes by the duly appointed canvassers of the election, William Doorn, Addelyn Dykhouse, James H. Himes, and Margaret J. Ruffe held on the evening of May 25, 1966 following the election the vote was determined to be as follows:

Precinct #1	In Favor 121	Against 22	Spoiled Ballots 2
Precinct #2	In Favor 232	Against 37	Spoiled Ballots None
Precinct #3	In Favor 83	Against 47	Spoiled Ballots None
Precinct #4	In Favor 168	Against 299	Spoiled Ballots 4
Precinct #5	In Favor 114	Against 55	Spoiled Ballots None
Precinct #6	In Favor 41	Against 5	Spoiled Ballots None
Precinct #7	In Favor 53	Against 6	Spoiled Ballots None
Precinct #8	In Favor 127	Against 43	Spoiled Ballots None
Precinct #9	In Favor 130	Against 93	Spoiled Ballots 2
Precinct #10	In Favor 42	Against 16	Spoiled Ballots None
Precinct #11	In Favor 205	Against 113	Spoiled Ballots None
Precinct #12	In Favor 47	Against 24	Spoiled Ballots None
	Total —— In Favor 1363	Total —— Against 760	Total —— Spoiled Ballots 8

(2) That the aforesaid election became effective in the Kent Intermediate School District immediate following the election held on the 25th day of May, 1966.

Further deponent sayeth not:

(s) Roscoe C. Miner
Roscoe C. Miner, Superintendent of
Kent Intermediate School District

Sworn and subscribed before me this
1st day of March, 1967

Notary Public for Kent County, State of Michigan
(s) Grace L. Knol
My Commission Expires: August 20, 1967

APPENDIX G

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

SCHOOL DISTRICT NO. 7, frl., NELSON TOWNSHIP, KENT COUNTY, MICHIGAN a/k/a EAST NELSON SCHOOL DISTRICT, et al,

Plaintiffs

vs

THE BOARD OF EDUCATION OF THE INTERMEDIATE SCHOOL DISTRICT OF THE COUNTY OF KENT, a Michigan Municipal Corporation, and, ERWIN J. KLEINERT, Individually and as Superintendent of the Intermediate School District of the County of Kent,

Defendants

ORDER
FILE NO. 4585

At a session of the above entitled Court held in the Court House in the City of Grand Rapids on the 1st day of September, 1966;

Present: Hon. FRED N. SEARL, Circuit Judge.

Defendants' Board of Education of the Intermediate School District of the County of Kent, and Erwin J. Kleinert and Intervenor's Motion to Dissolve any and all Temporary Restraining Orders and Temporary Injunctions having come on to be heard and the Court being fully advised in the premises,

IT IS ORDERED that Defendants' and Intervenor's Motion to Dissolve any and all Temporary Restraining Orders and Temporary Injunctions previously issued by this Court is hereby granted.

IT IS FURTHER ORDERED that all Plaintiffs' school districts turn over their books and records to the high

school district to which they were assigned pursuant to the Kent County Intermediate Reorganization plan.

IT IS FURTHER ORDERED that a separate and accurate accounting and record of all property, assets, records and funds turned over by Plaintiffs' school districts to the high school district to which they became attached be maintained by the high school district in order to avoid any litigation in the future involving accounting problems in the event the Plaintiffs' school districts prevail in the final decision of this action.

IT IS FURTHER ORDERED that the Defendants' high school district utilize the property of Plaintiffs' school districts in such a manner as to comply with any conditions upon which Plaintiffs' school districts hold their property to prevent the reversion of the property during the pendency of this proceeding.

This order is without prejudice as to the rights of the parties as set forth in the pleadings.

FRED N. SEARL
Circuit Judge

Attest: A true copy
Jack Bronkema, Clerk
(s) Stanley E. Neureither
Deputy

(countersigned)
Stanley E. Neureither

Approved as to form:
(s) James J. Wood
Assistant Attorney General
The Capitol, Lansing, Mich.

(s) Thomas J. Nordberg
Attorney for Defendants
901 Capitol Savings & Loan Bldg.
Lansing, Michigan

(s) Lee Boothby
Attorney for Plaintiffs
311 East Main Street
Niles, Michigan.

APPENDIX H

AFFIDAVIT

STATE OF MICHIGAN)
)
COUNTY OF KENT)

ROSCOE C. MINER, Superintendent of the Kent Intermediate School District, being duly sworn deposes and says:

(1) That he is the Superintendent of the Kent Intermediate School District of the State of Michigan,

(2) That the following described school districts are constituent school districts to the Kent Intermediate School District as of September 1, 1966:

1. Ashley School District, Grattan 6fr
   Census 61 Class Primary
2. Byron Center Public School, Byron 1fr
   Census 2210 Class Fourth
3. Caledonia Community Schools, Caledonia 1fr
   Census 2325 Class Fourth
4. Cedar Springs Public Schools, Nelson 5fr
   Census 2219 Class Fourth
   (included now in the above are the former primary districts (1964-65) Courtland Center, Courtland 3fr; Benham, Courtland 5; Evans, Courtland 6fr; East Nelson, Nelson 3fr; Nelson Center, Nelson 6; Huggard, Nelson 7fr; Griswold, Spencer 1fr, and Victory, Spencer 2)
5. Comstock Park Public Schools, Plainfield 9fr
   Census 2174 Class Fourth
6. East Grand Rapids Public Schools, Grand Rapids 3fr
   Census 4688 Class Third
7. Forest Hills Public Schools, Grand Rapids 15fr
   Census 4227 Class Third

8. Godfrey-Lee Public Schools, Wyoming 7
   Census 2245 Class Fourth

9. Godwin Hts. Public Schools, Paris 6fr
   Census 4337 Class Third

10. Grand Rapids Public Schools, Grand Rapids 1
    Census 55867 Class Second

11. Grandville Public Schools, Wyoming 1fr
    Census 5523 Class Third

12. Grattan Center School, Grattan 1fr
    Census 289 Class Fourth

13. Kelloggsville Public Schools, Wyoming 8fr
    Census 3244 Class Fourth

14. Kenowa Hills Public Schools, Walker 16fr
    Census 3904 Class Third
    (former Boyd Primary District now split between Kenowa Hills and Sparta)

15. Kent City Community Schools, Tyrone 4fr
    Census 1397 Class Fourth
    (includes former Casnovia District, Tyrone 8fr)

16. Kentwood Public Schools, Paris 12fr
    Census 6198 Class Third
    (includes former East Paris Primary, Paris 8)

17. Lowell Area Schools, Lowell 1fr
    Census 2872 Class Fourth
    (includes former Talbot, Grattan 5fr; Alton, Vergennes 1; Moseley, Vergennes 4fr; Mapes, Lowell 6)

18. Northview Public Schools, Plainfield 16fr
    Census 3555 Class Third

19. Rockford Public Schools, Algoma 1fr
    Census 3938 Class Third
    (includes former Stinson, Courtland 1)

20. Sparta Area Schools, Sparta 2fr
    Census 2997 Class Fourth

21. Wyoming Public Schools, Wyoming 11
Census 9669 Class Third

(3) That the above school districts contain the school census herein enumerated based upon the May 1966 census figures and the classification of school districts as provided by Michigan Law.

Further deponent sayeth not:

(s) Roscoe C. Miner
Superintendent of Kent Intermediate
School District

Sworn and subscribed before me
this 1st day of March, 1967

Notary Public for Kent County of Michigan
(s) Grace L. Knol
My Commission Expires: August 20, 1967.

APPENDIX I

AFFIDAVIT

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

I, ROSCOE C. MINER, being duly sworn, depose and say that I am the Superintendent of Kent Intermediate School District and am familiar with the school districts therein and their history and that I have final responsibility for the keeping of the records of such Intermediate School District;

That based on such knowledge and records, I hereby state that Nelson Center (Nelson No. 6) School District was annexed to Cedar Springs Public Schools and that such annexation became effective on the 8th day of November 1965 and that the canvass filed with the Kent Intermediate School office shows the vote thereon to have been 22 yes and 2 no.

(s) Roscoe C. Miner
Superintendent of Kent Intermediate School District

Subscribed and sworn to before me a Notary Public for the County of Ingham, this 1st day of March, 1967.

(s) Eunice K. Friedewald
My Commission expires Dec. 9, 1968.

(Notarial Seal)

APPENDIX J

AFFIDAVIT

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

I, BRUCE T. BLANCHARD, being duly sworn, depose and say that I am the Superintendent of Ionia Intermediate School District and am familiar with the two elections held in such district pursuant to Act 289, PA 1964 (Reorganization Act); that I have final responsibility for the keeping of the records of such intermediate school district;

That based on such knowledge and records, I hereby state:

That the plan of reorganization for Ionia Intermediate School District called for the merger of Ashley (Grattan #6 Fractional) and Grattan Center School (Grattan #1 Fractional) being two districts of the Kent Intermediate School District, with Belding Area Schools, a district in the Ionia Intermediate School District;

That at an election held June 13, 1966, the total Ionia Intermediate Reorganization Plan was rejected by a vote of 3,610 to 1,491 as shown by the canvass filed in the Ionia Intermediate School District office;

That at a second election held December 12, 1966, where voting was by proposed district, and the above described portion of the reorganization plan was proposition A, proposition A was rejected by a vote of 374 to 265, as shown by the canvass filed in the Ionia Intermediate School District office;

That Ashley (Grattan #6 Fractional) and Grattan Center School (Grattan #1 Fractional) therefore continue as school districts in the Kent Intermediate School District.

(s) Bruce T. Blanchard

Subscribed and sworn to before me
a Notary Public in and for the County of
Ingham, State of Michigan this 1st
day of March, A.D. 1967.

(s) Eunice K. Friedewald
My Commission expires Dec. 9, 1968.

(Notarial Seal)

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 20 1967
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 430

JAMES SAILORS and LORETTA SAILORS; SEYMOUR KONING and MILDRED KONING; GRAZZI MULLAY and ROSALIE MULLAY and THE BOARD OF EDUCATION OF THE CITY OF GRAND RAPIDS, a second class school district; and WILLIAM A. DUTHLER and ANNA M. DUTHLER; HARVEY A. DUTHLER and EDNA M. DUTHLER,

APPELLANTS,

VS.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, and VICTOR WELLER, DEWEY JAARSMA, MARY I. KEELER, RUSSELL EMMONS and C. B. LEAVER, as members thereof; KENTWOOD PUBLIC SCHOOLS, a fourth class school district, and THE ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

BRIEF FOR APPELLEE ATTORNEY GENERAL OF THE STATE OF MICHIGAN

ROBERT A. DERENGOSKI,
Solicitor General of the State of Michigan on Behalf of Appellee Frank J. Kelley, Attorney General of the State of Michigan

EUGENE KRASICKY,
Assistant Attorney General on Behalf of Appellee Frank J. Kelley, Attorney General of the State of Michigan

The Capitol
Lansing, Michigan 48902

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IN THE SUPREME COURT OF THE UNITED STATES

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On Appeal from the United States District Court for the Western District of Michigan, Southern Division

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BRIEF FOR APPELLEE ATTORNEY GENERAL OF THE STATE OF MICHIGAN

QUESTION PRESENTED

Does the Michigan statute which provides for the election of members of the county (intermediate) board of education by vote of a body composed of 1 member of the board of

education of each constituent school district, who shall be designated by the board of education (popularly elected by school electors) of the constituent school district of which he is a member, deny the equal protection of the laws to the individual appellants where neither the Michigan Constitution nor any State statute confers a vote upon them for the office of member of the county (intermediate) board of education, and does such question present a substantial Federal question for determination by this Court?

ARGUMENT

I

Reynolds v. Sims

The Attorney General of Michigan, intervening appellee herein, advises at the outset that the principles set forth in *Reynolds v. Sims*, 377 U.S. 533, 12 L. ed 2d 506, 84 S Ct 1362, have been endorsed by him even prior to the issuance of *Reynolds*. See *Scholle v. Secretary of State*, 367 Mich 176, certiorari denied by this Court June 22, 1964, sub nom *Frank D. Beadle et al.*, Petitioners v. *August Scholle et al*, 377 U.S. 990, 12 L ed 2d 1043, 84 S Ct 1901; and *William C. Marshall et al.*, Appellants, v. *James M. Hare, Secretary of State of Michigan*, et al., 378 U.S. 561, 12 L ed 2d 1036, 84 S Ct 1912.

The Attorney General of Michigan sets forth that if the individual appellants had and have an absolute right to vote for members of a Michigan county (intermediate) board of education then of course *Reynolds* must be invoked.

In *Belles v. Burr*, 76 Mich 1, 43 NW 24, it was held (76 Mich 11, 43 NW 28):

"Viewing the questions historically, it is apparent that for 50 years it has never been considered that the qualifications of voters at school-district meetings must be identical with those prescribed in the Constitution as qualifications of electors entitled to vote under that instrument. The authority granted by the Constitution to the Legislature to establish a common or primary school system carried with it the authority to prescribe what officers should be chosen to conduct the affairs of the school-districts, to define their powers and duties, their term of office, *and how and by whom they should be chosen* (emphasis supplied).

"School-districts are regarded as municipal corporations. *School-district v Gage,* 39 Mich 484; *Seeley v Board of Education, Id. 486.* As such they preceded the Constitution (*Stuart v School-district,* 30 Mich. 69), and were recognized by that instrument (Const. 1835, Art. 10, § 3; Const. 1850, Art. 13 § 5). But no officer of the school-district is mentioned or recognized by that instrument. The reason is that the whole primary school system was confided to the Legislature, and it cannot be said that the officers of school-districts, chosen pursuant to the system adopted by the Legislature, are constitutional officers. The Constitution provided for no municipal subdivisions smaller than towns, except cities and villages, and it authorized the Legislature to incorporate these. Const. 1850, Art. 15, § 13."

After 127 years it has never been considered that the qualifications of Michigan school electors "must be identical with those prescribed in the Constitution as qualifications of electors entitled to vote under that instrument".

Although since 1951 (Act No. 257 PA 1951), the quali-

fications of Michigan school electors have been the same as those prescribed by the Constitutions of 1908 and 1963, such qualifications have been prescribed by the school code and not by the Constitutions. See Appendix A for the qualifications of school electors found in the school code under the Michigan Constitutions of 1908 and 1963.

The rule of *Belles, supra,* has always been the law of Michigan.

II

State Legislature Controls Educational System in Michigan

In *Attorney General v Detroit Board of Education,* 154 Mich 584, 118 NW 606, the Supreme Court quoted with approval the opinion of the judges of the Wayne County Circuit Court, which, in part, was as follows (154 Mich 590, 118 NW 609):

> "Education in Michigan belongs to the State. It is no part of the local self-government inherent in the township or municipality, except so far as the Legislature may choose to make it such. The Constitution has turned the whole subject over to the Legislature. *Belles v Burr,* 76 Mich 1."

We quote from *MacQueen v Port Huron City Commission,* 194 Mich 328, 160 NW 627, as follows (194 Mich 336, 160 NW 629):

> "Fundamentally, provision for and control of our public school system is a State matter, delegated to

and lodged in the State legislature by the Constitution in a separate article entirely distinct from that relating to local government. The general policy of the State has been to retain control of its school system, to be administered throughout the State under State laws by local State agencies organized with plenary powers independent of the local government with which, by location and geographical boundaries, they are necessarily closely associated and to a greater or less extent authorized to cooperate. Education belongs to the State. It is no part of the local self-government inherent in the township or municipality except so far as the legislature may choose to make it such. *Belles v Burr*, 76 Mich 1 (43 NW 24); *Attorney General v Board of Education*, 154 Mich 584 (118 NW 606). The general school laws were carefully planned and enacted to guard that distinction; provision was made for organization of the common school districts, with officers elected at school meetings by electors with defined qualifications, and who as a school board were given large plenary powers and control of school matters, practically independent from the local government of municipalities in which the schools were situated."

Ruppert v Township School District, 252 Mich 482, 233 NW 387, quoting from *MacQueen, supra*, at page 336 (252 Mich 486-7, 233 NW 389); *Jones v Grand Ledge Public Schools*, 349 Mich 1, 84 NW 2d 327, also quoting *MacQueen, supra*, at page 5 (84 NW 2d 329) and *Lansing District v State Board of Education*, 367 Mich 591, 116 NW 2d 866.

(a) Historically the Michigan Legislature has prescribed that members of the boards of education of the various classifications of school districts be elected at large

In Michigan, in addition to a handful of school districts created by special acts of the legislature, known as special act school districts, there are 5 classifications of school districts, namely: primary school districts, fourth class school districts, third class school districts, second class school districts and first class school districts. The School Code of 1955, § 2; CL 1948, § 340.2; MSA § 15.3002. By statutory school census requirements, Detroit is the only first class school district and Grand Rapids and Flint are the only two second class school districts. The members of the boards of education of all 5 classifications of school districts are elected at large. This is recognized by District Judge Fox, in his dissent, when he said (254 F Supp 24, Jurisdictional Statement, Appendix B, p. 15a): "For even though members of local school districts are elected by popular election, the election of the 5 members of the Intermediate Board is by majority vote of the constituent school districts in the county, regardless of the respective populations of the several school districts."

(b) County (intermediate) school districts were first created in 1935, are state agencies distinct from the 5 classifications of school districts and did not supersede or replace such school districts

County (intermediate) school districts were first created by Act No. 117 of the Public Acts of Michigan of 1935, known as "the County School District Act" (CL 1948, § 388.171, et seq, MSA § 15.161, et seq).

Section 2 of the 1935 act (CL 1948, § 388.172; MSA § 15.162) specifically provided that:

> "Said county school district shall include all the territory of the county but it shall not supersede nor replace any of the school districts organized and operating under laws enforced at the time of the passage of this act, nor shall it control or otherwise interfere with the rights of said school districts, except as hereinafter provided in this act."

(c) In creating county boards of education, the Legislature, exercising its plenary power over education under the Constitution, did not provide for the popular election of members of the boards of education of such county school districts

In creating county school districts, the Legislature, acting under its plenary constitutional power, did not provide for the popular election of members of the boards of education of such county school districts. Rather, it was provided that the 5 members of each county board would be chosen at a meeting in the county of representatives from each of the constituent local school districts. In 1962 the Legislature provided for a referendum on the popular election of members of intermediate boards of education. Act No. 190 of the Public Acts of 1962, effective March 28, 1963, as amended by Act No. 290 PA 1964 and Act No. 52 PA 1965 (§§ 294b through 294h, CL 1948 340.294b, et seq; MSA § 15.3294 (2), et seq.

In the recent 1962 case of *Lansing District v State Board of Education, supra,* a transfer of territory between school districts was involved and one of the questions presented was the following (367 Mich. 594, 116 NW 2d 868):

"3. Is section 461 of the school code unconstitutional as denying to plaintiff the equal protection of the laws, in that it grants a vote on the question of transfer of territory to the districts from which detachment is made, while denying a vote to the district to which the territory is transferred?"

In disposing of this question, Mr. Justice Kavanagh, writing for a unanimous court, held (367 Mich 599, 116 NW.2d 870):

"The third question raised by plaintiff school district is whether section 461 of the school code of 1955 is unconstitutional as denying to plaintiff the equal protection of the laws in that it grants a vote on the question of transfer of territory to the district from which detachment is made, while denying a vote to the district to which the territory is transferred.

"Plaintiff does not question that the authority to alter boundaries may be delegated without the consent of the inhabitants of the territory annexed or the municipality to which it is annexed, or even against its express protest. Its claim is that to deny one district a vote with reference to the transfer and permit a vote in the other district is to deny the equal protection of the laws contrary to the provisions of both the State and Federal Constitutions. These objections have been disposed of against plaintiff's contention by the following decisions, which we content ourselves with citing: *Hunter v City of Pittsburgh*, 207 US 161 (28 S Ct 40, 52 L ed 151); *Attorney General, ex rel Battishill, v Springwells Township Board*, 143 Mich 523.

"In order to deny the equal protection of the laws contrary to the provisions of the State and Federal

> Constitutions, it would be necessary for the electors in plaintiff school district to have an absolute right to vote on the annexation question. The above mentioned decisions clearly indicate they do not have such a right. The legislature is the only body that could give plaintiff school district such a right. This it has omitted. Not being entitled to the right, the fact that it is given to one district and not to the other does not deny the equal protection of the laws contrary to the provisions of the State and Federal Constitutions."

The Michigan Legislature has not given the individual appellants the absolute right to vote for members of county (intermediate) boards of education. The legislature is the only body that could give appellants such right. This having been omitted, the individual appellants are not entitled to the right.

At least since *Belles, supra,* it has been the law of Michigan that the legislature, under the various Constitutions of Michigan, has plenary power to determine how school board members should be chosen and upon what matters school electors could vote. Whether a school elector has or has not the right to vote for members of a county (intermediate) school district is of State concern only.

III

The transfer of territory to appellee Kentwood Public Schools should stand

Should the Court agree with appellants, appellee urges the Court to affirm the unanimous decision of the District

Court allowing the transfer of territory to appellee Kentwood Public Schools to stand.

The transferred territory was originally a part of the Kentwood school district and only became a part of the Grand Rapids school district by operation of law, supra, ~~page 6 and 4.~~ The county board of education transferred the territory back to Kentwood and the State Board of Education on appeal set aside the action of the county board and entered its own order transferring somewhat less of the territory to Kentwood.

The transferred territory has a tax base of over five million dollars and a modern, 14-classroom elementary school is located thereon.

Judge Fox held (254 F Supp 26; Jurisdictional Statement, App. B, p. 20a):

> "Following the well established principle that acts of a *de facto* body have full legal effect, the Court is not disposed to grant plaintiffs this facet of the relief they seek. The possible harm in setting a precedent of this sort, even on the facts of this case, is viewed as more to be shunned than the harm resulting to individual plaintiffs by allowing the transfer to stand. Orderly functioning of government demands no less. See Johnson v Genesee County, 232 F Supp 567 (E.D. Mich, 1964); Scholle v Hare, 367 Mich 176, 116 NW 2d 350; Williams v Secretary of State, 154 Mich 447, 108 NW 749; and State v Sylvester, supra.
>
> "The preferable course is to allow a properly apportioned body to remedy whatever ills have come

about by acts of its malapportioned state, and this is the policy which this court will follow."

Judges O'Sullivan and Kent concurred with Judge Fox, holding (254 F Supp 28, Jurisdictional Statement, App. A, p. 1a):

"We find ourselves in a position where we concur with Judge Fox, writing for the Court, in reaching the conclusion that this Court will not overturn the acts of the de facto Kent Intermediate Board."

The transfer to Kentwood Public Schools should stand.

CONCLUSION

The Attorney General of Michigan seeks dismissal of this appeal on the basis that appellants have no absolute right to vote for members of a county (intermediate) board of education. Should the Court find that such right does exist then the Attorney General urges that the one-man one-vote principle enunciated in *Reynolds* be invoked, and in any event the Attorney General urges that the Court affirm the unanimous decision of the District Court allowing the transfer of territory to appellee Kentwood Public Schools.

Respectfully submitted,

ROBERT A. DERENGOSKI,
Solicitor General of the State of Michigan on Behalf of Appellee Frank J. Kelley, Attorney General of the State of Michigan

EUGENE KRASICKY,
Assistant Attorney General on Behalf of Appellee Frank J. Kelley, Attorney General of the State of Michigan

The Capitol
Lansing, Michigan 48902

March 14, 1967

APPENDIX A

THE QUALIFICATIONS OF SCHOOL ELECTORS

Chapter 4, part 2, of The School Code of 1955, as last amended by Act No. 257 of the Public Acts of 1951, with reference to school elections and the qualifications of school electors under the 1908 Constitution, provided as follows:

School electors; qualifications. Section 1. A school elector shall possess the qualifications provided for qualified electors in section 1, article 3 of the constitution (1908): Provided, That upon questions involving the direct expenditure of public moneys or the issue of bonds, school electors shall possess the qualifications provided in section 4 of article 3 of the constitution: Provided further, That no person shall vote in any school election unless he shall have resided within the school district at least 30 days next preceding said election. (C.L. '48, § 354.1; C.L. '29, § 7410.)

Chapter 7, part 2, of The School Code of 1955, as amended, with reference to school elections and the qualifications of school electors under the 1963 Constitution, provides as follows:

School electors, qualifications; repeat elections on proposals. (M.S.A. 15.3511)

Sec. 511. A school elector shall possess the qualifications provided for qualified electors in section 1 of article 2 of the constitution (1963) and statutes enacted thereunder. Upon questions involving the increase of the ad valorem tax limitation imposed by section 6 or article 9 of the constitution for a period of more than 5 years or the issue of

bonds, school electors shall possess the qualifications provided in section 6 of article 2 of the constitution. No person shall vote in any school election unless he shall have resided within the school district at least 30 days next preceding the election. The same question or measure involving consolidation of school districts, annexation of entire districts, annexation or transfer of a portion of 1 school district to another, or bonding of school districts, shall not be submitted to the voters of any school district more often than once in 6 months, unless the board is presented with a petition requesting the board to call another election and signed by qualified school electors of the district to the number of not less than 50% of the registered general electors residing in the district as of the date the petition is presented to the board. Any city or township clerk shall certify to the intermediate school district superintendent of schools the number of registered general electors residing in a school district when requested by the intermediate school district superintendent, who shall make the information available to the board of the district.

Supreme Court of the United States

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FILED
MAR 17 1967
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OCTOBER TERM, 1966

No. 958

HANK AVERY,
Petitioner,

against

MIDLAND COUNTY, TEXAS, et al.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

No. 491

BOARD OF SUPERVISORS OF SUFFOLK COUNTY, NEW YORK, et al., Appellants,

against

I. WILLIAM BIANCHI, JR., et al., Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

No. 430

JAMES SAILORS, et al., Appellants,

against

BOARD OF EDUCATION OF THE COUNTY OF KENT, et al., Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT OF MICHIGAN

No. 624

EARLE C. MOODY, et al., Appellants,

against

RICHMOND M. FLOWERS, et al., Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT OF ALABAMA

No. 724

FRANK A. DUSCH, et al., Appellants,

against

J. E. CLAYTON DAVIS, et al., Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE FOURTH CIRCUIT

BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK AS *AMICUS CURIAE*

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
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BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK AS *AMICUS CURIAE*

Interest of the *Amicus*

The Attorney General of the State of New York is vitally interested in the above appeals insofar as their dis-

position may affect the future structure of municipal and county government.

Numerous suits have been instituted in the courts of our State to compel the reorganization of county boards and other local legislative bodies in accordance with the principle set forth in *Reynolds* v. *Sims*, 377 U. S. 533 (1964). The New York State Office For Local Government reports that a total of 25 counties of the 62 counties in the State have been involved in such litigation. City legislative bodies have been involed in similar litigation to a lesser degree.

The most recent bulletin of our Office For Local Government (Feb. 28, 1967) also indicates that, in the November, 1966 general elections alone, reapportionment plans were considered by referendum in 17 counties. At such elections, twelve plans were approved, five disapproved. As to the latter five counties, action is now being taken to formulate new plans. The local government report states, too, that 13 counties are currently operating with reapportioned legislative bodies including three which have adopted weighted voting plans in November, 1966 and nine in which interim weighted voting has been imposed by court order.

We need not burden the Court with further statistics to demonstrate the need to restore order to local government in New York, as well as other States; and to remove any doubt as to whether, *and to what extent*, this Court intends the principles stated in *Reynolds* to be applicable to county boards and other forms of local government.

The Attorney General of the State of New York, accordingly, files this brief as *amicus curiae* pursuant to Rule 42 of the Revised Rules of this Court.

Position of the New York Attorney General

(1)

We are informed that the United States Solicitor General, through an *amicus* memorandum filed (March, 1967) in *Avery* v. *Midland County Texas* (No. 958, Oct. Term, 1966), is expressing doubt that a three-judge statutory court was properly convened in *Board of Supervisors of Suffolk County* v. *Bianchi* (No. 491).

The Attorney General has abstained from active participation in earlier stages of the Suffolk County litigation (No. 491) since it has not concerned the constitutionality of any statute which has state-wide application. That action deals with a provision of the Suffolk County Charter (§ 203), in effect only in a single county of the State.

It further appears from the memorandum for the United States as *amicus curiae* that it is quite doubtful that a three-judge statutory Court was properly convened in No. 624. Since, as we have indicated (*supra*), the New York courts have encountered voluminous litigation involving the question of whether and to what extent county governing boards are to be controlled by this Court's ruling in *Reynolds* v. *Sims*, *supra*, and related cases, we support the suggestion of the United States Solicitor General (p. 6) that the Court may wish to grant certiorari in the Texas case (No. 958) and set it for argument along with the others cases to determine these questions at this time.

(2)

The New York Court of Appeals has already held that the principle stated in *Reynolds* v. *Sims*, *supra*, is applicable to local legislative bodies. *Seaman* v. *Fedourich*, 16 N. Y. 2d 94, 101 (1965). It has further held that the courts of New York "obligated as they are to uphold the Federal Constitution as well as the State's Constitution—whose equal protection clause * * * is as broad in its cover-

age as that of the Fourteenth Amendment * * * are vested with jurisdiction of actions brought to vindicate the right to equal representation" (16 N. Y. 2d 94, 102).

In view of the holding in the *Seaman* case, which has been consistently followed by the lower courts in New York, the Attorney General advocates in an appropriate case in this Court (the U. S. Solicitor General suggests No. 958), the extension of the "one person, one vote" principle to local legislative bodies. It has already been so extended in numerous New York cases. See, for example, *Goldstein v. Rockefeller*, 45 Misc. 778 (S. Ct., Monroe Co., 1965), where this office urged (pp. 782-783) such extension of the *Reynolds* principle. See also *Town of Greenburgh v. Bd. of Supervisors of Westchester County*, 49 Misc. 2d 116 (Sup. Ct., West. Co., 1966) 51 Misc. 2d 168 (1966); and —— Misc. 2d —— (reported with deletions, 157 New York Law Journal, No. 29, p. 18, Feb. 10, 1967) where former Presiding Justice NOLAN approved, in principle, reapportionment plans providing for both weighted voting and multi-member districts, as methods of effectuating the "one person, one vote" principle.

(3)

We urge, however, that this Court, in extending the principle of "one person, one vote" to local legislative bodies, permit adequate variety in the manner in which local governments may comply with this principle. The New York rule set forth in the *Seaman* case (*supra*) does not preclude local governments in New York, which have been granted a considerable degree of "home rule" power* from adopting many forms of local government, including those which provide for modified weighted voting, to achieve compliance with the principles of the *Reynolds* case. Even one of the most enthusiastic advocates of this Court's decision in *Reynolds* has recognized that this Court

* See New York Constitution, Art. IX, § 8; and New York Municipal Home Rule Law (McKinney's Cons. Laws of New York, Book 35-C).

has "reserved to the states the traditional room for experimentation and maneuver". McKay, *Reapportionment* (1965), p. 254.

The leeway required for variety in providing fair representation of voters in local governmental affairs was recognized by the three-judge Court convened in *Blaikie v. Wagner*, 258 F. Supp. 364 (D.C.N.Y., 1965). That Court held that the *Reynolds* principle did not prevent a city-wide limited voting system designed to afford representation to a minority party in each county of the city. More recently, this need for variety was recognized in the latest opinion in the Westchester County case.* See also, Dixon,

---

*In recognizing the need for an element of discretion in the manner in which county governments shall conform to the principle of "one person, one vote", Justice NOLAN stated (157 N.Y.L.J., *supra*, p. 18):

> "Plans which provide for reapportionment of county legislative bodies will necessarily deal with varying conditions in different counties. Each should be judged in the light of its own provisions as they deal with local conditions, and as they affect the citizen's right to fair and effective representation in the legislative body. What may be impermissible with respect to state legislative reapportionment plans may be permissible in county plans, and what may be permissible in one county may be unacceptable in another (cf. *Reynolds* v. *Sims, supra*, 377 U. S. 533, 578; *Swann* v. *Adams*, supra). The equal protection clauses do not require the application of rigid rules in all cases of legislative apportionment, if varying circumstances justify a departure from them, in particular cases, or classes of cases. There are obvious differences between state legislative bodies and county board of supervisors which justify a different approach to county reapportionment problems, than that which has been approved, so far with respect to state plans. The composition of boards of supervisors has been provided for by state laws presumably for reasons which the Legislature considered sufficient, and while those laws may be superseded under home rule powers, or charter provisions there is no reason why a board of supervisors should not attempt to comply with them in so far as it may be possible to do so if that purpose can be effected without violation of the constitutional rights of the citizens of the country. The towns and the cities are political subdivisions of the county, and large or small, each has its problems which it does not share with neighboring towns, or cities, and in which its neighbors may have no interest whatsoever."

Reapportionment Memorandum on Floterial Districting Population Variances Among States, And Additional Elements of Fair Representation" (Dec. 5, 1966), pp. 31-34.

Dated: New York, New York, March 15, 1967.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Amicus Curiae

DANIEL M. COHEN
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of Counsel

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL., APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

REPLY OF APPELLEES TO THE MEMORANDUM OF THE SOLICITOR GENERAL AND THE BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK AS AMICI CURIAE

The thrust of the Solicitor General's Memorandum for the United States as amicus curiae in *Avery v Midland County, Texas,* October Term, 1966, No. 958 and the Brief of the Attorney General of the State of New York as amicus curiae in the 5 cases [*Avery,* No. 958; *Bianchi,* No. 491; *Sailors,* No. 430; *Moody,* No. 624 and *Dusch,* No. 724] is to suggest to the Court that certiorari should be granted in *Avery* and set for argument along with the other cases [*Sailors, Moody, Bianchi* and *Dusch*].

Both the Solicitor General and the New York Attorney General perceive jurisdictional problems in Nos. 491 and 624 and that "the Court might not be able to reach the merits in those cases" [Solicitor General's Memorandum at page 5].

The Solicitor General concedes that in our case, No. 430, "a three-judge court was properly convened" [Solicitor General's Memorandum, page 4].

Both the Solicitor General and the New York Attorney General express the feeling that Nos. 430 and 724, in which jurisdiction on appeal "seems clearly proper" [Solicitor General's Memorandum, page 6] involve unique and specialized questions and do not go to the merits of the question as to whether and to what extent "this Court intends the principle stated in *Reynolds* to be applicable to county boards and other forms of local government" [Brief of New York Attorney General, page 2].

With this we do not agree. *Sailors* [No. 430] fairly presents the question whether *Reynolds* shall be extended to *any* local unit of state government. In the alternative, the question is fairly presented that if *Reynolds* applies, to what extent it will apply.

If the suggestions of the Solicitor General and the New York Attorney General are followed, arguments in our case [*Sailors,* 430] cannot possibly be heard until the October, 1967 term of Court. We believe such a delay is unjustified.

This case has been pending over 4 years and appellee Kentwood Public Schools has a tax base of more than $6,500,000 and a modern 14-room elementary school building at stake.

We respectfully urge the Court to proceed with oral arguments in *Sailors,* No. 430; *Moody,* No. 624; *Bianchi,* No. 491 and *Dusch,* No. 724, as originally ordered by the Court.

Respectfully submitted,

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

Office-Supreme Court, U.S.
FILED
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JAMES SAILORS, ET AL., APPELLANTS,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL., APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

SUMMARY OF ARGUMENT

BRIEF FOR APPELLEE KENTWOOD PUBLIC SCHOOLS

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 430

James Sailors, et al., appellants,

v.

The Board of Education of the County of Kent, et al., appellees.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

---

SUMMARY OF ARGUMENT

BRIEF FOR APPELLEE KENTWOOD PUBLIC SCHOOLS

The following is the Summary of Argument, which was omitted in the Brief for Appellee Kentwood Public Schools.

1. The original individual plaintiffs and The Board of Education of the City of Grand Rapids, now appellants, brought this action to enjoin appellee, The Board of Education of the County of Kent, from acting on a transfer of territory requested by appellee Kentwood Public Schools on the ground [among others] that the county board was unconstitutionally composed and to enjoin further elections until the alleged malapportionment was brought into bal-

ance. An ex parte order restraining the county board from acting was entered and later revoked. The county board granted the requested transfer and the complaint was amended to set aside the transfer.

2. The one man one vote doctrine of *Reynolds v Sims*, 377 US 533, assumes that the one man has a constitutional or statutory absolute right to vote. In Michigan, education belongs to the state and is no part of local self-government. *Attorney General v Detroit Board of Education*, 154 Mich 584, 118 NW 606. School electors are not and never have been constitutional general electors and may only vote on such school questions as the legislature chooses. *Belles v Burr*, 76 Mich 1, 43 NW 24; *Lansing District v School Board of Education*, 367 Mich 591, 116 NW 2d 866.

3. The legislature did not provide for the popular election of members of county [intermediate] boards of education and a school elector does not have the right to vote for such members. This is not a "voting case" [see *Fortson v Morris*, 385 US 231] and the individual appellants have no personal right protected by the Equal Protection Clause of the Fourteenth Amendment. *Lansing District, supra.*

4. In the alternative, should the Court hold that Michigan county [intermediate] boards of education are malapportioned, the transfer of territory to appellee Kentwood Public Schools should stand as the act of a de facto body and the unanimous holding of the three-judge court in this respect should be affirmed. 254 F Supp 26 and 28.

5. The appellants appealed the act of transfer by the county board to the State Board of Education, which is a constitutional body whose members are elected at large throughout the State and which has never been a party to this suit. The act of transfer of territory by the State Board of Education of appellee Kentwood Public Schools should be sustained as the act of a de jure body.

6. Appellant The Board of Education of the City of Grand Rapids has no standing, because it has no privileges

or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator. *Williams v Baltimore*, 289 US 36.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS

v.

BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

No. 491

BOARD OF SUPERVISORS OF SUFFOLK COUNTY, NEW YORK, ET AL., APPELLANTS

v.

L. WILLIAM BIANCHI, JR., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

No. 624

EARLE C. MOODY, ET AL., APPELLANTS

v.

RICHMOND M. FLOWERS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

No. 724

FRANK A. DUSCH, ET AL., APPELLANTS

v.

J. E. CLAYTON DAVIS, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

1. No. 430. The majority and dissenting opinions of the three-judge district court (R. 430; 196–219,

220–222[1]) are reported at 254 F. Supp. 17 (W.D. Mich.).

2. No. 491. The opinion of the three-judge district court (R. 491; 189–198) is reported at 256 F. Supp. 617 (E.D.N.Y.).[2] A prior opinion of the three-judge district court (R. 491; 123–136) is reported at 238 F. Supp. 997 (E.D.N.Y.) and the earlier opinion of a single district judge (R. 491; 107–111) is reported at 217 F. Supp. 166 (E.D.N.Y.).

3. No. 624. The majority and dissenting opinions of the three-judge district court (R. 624; 56–64, 65–71) are reported at 256 F. Supp. 195 (M.D. Ala.).

4. No. 724. The opinion of the Court of Appeals for the Fourth Circuit (R. 724; 116–122) is reported at 361 F. 2d 495. The prior opinions of the district court (R. 724; 74–77, 78–82, 105–115) are unreported.

JURISDICTION

1. No. 430. The order of the three-judge district court, dismissing the complaint, was entered on May 2, 1966 (R. 430; 223–224). A notice of appeal to this Court was filed on June 16, 1966, and probable jurisdiction was noted on December 5, 1966 (R. 430; 224–225, 226). The jurisdiction of this Court is grounded upon 28 U.S.C. 1253.

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[1] In order to avoid confusion, since the government is filing one brief in the four instant cases, citations to the records will include the number of the case involved. The case numbers will appear immediately after the capital "R." and before the page numbers being cited.

[2] A later, unreported *per curiam* opinion is not printed in the Record, but is contained in the Appendix to the Jurisdictional Statement filed in No. 491 (J.S. 491; 13a–19a).

2. No. 491. The judgment of the three-judge district court was entered on June 15, 1966 (R. 491; 198–199). Notices of appeal to this Court were filed on June 30, 1966, and probable jurisdiction was noted on December 5, 1966 (R. 491; 216–219, 219–223). The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

3. No. 624. The order of three-judge court, dismissing the cause, was entered on June 10, 1966 (R. 624; 72). A notice of appeal to this Court was filed on August 5, 1966, and probable jurisdiction was noted on December 5, 1966 (R. 624; 148–153, 159). The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

4. No. 724. The judgment of the court of appeals was entered on May 30, 1966 (R. 724; 123). A notice of appeal to this Court was filed on August 26, 1966 (R. 724; 124–125), and, on January 9, 1967, an order of this Court set the case for argument along with the other three cases, with the question of jurisdiction postponed to the hearing on the merits (R. 724; 127). The jurisdiction of this Court rests upon 28 U.S.C. 1254(2).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> * * * No State shall * * * deny to any person within its jurisdiction the equal protection of the laws.

Section 294a of the Michigan School Code (Mich. Stat. Ann., Sec. 15.3294(1)) is set out in Appendix A–I *infra*, pp. 131–132. Sections 201 and 203 of the

Suffolk County Charter (Ch. 278, Laws of New York, 1938) are set out in Appendix A–II *infra*, p. 133. Act No. 9, Sec. 2, Acts of Alabama, Reg. Sess., 1957, is set out in Appendix A–III *infra*, pp. 134–135. Sections 3.01 and 3.02 of the Charter of the City of Virginia Beach (Ch. 147, Acts of Assembly of Virginia, 1962, as amended by Ch. 39, Acts of Assembly of Virginia, 1966) are set out in Appendix A–IV *infra*, p. 136.[2]

QUESTIONS PRESENTED

1. Whether the equal-population principle enunciated in *Reynolds* v. *Sims*, 377 U.S. 533, and other cases involving State legislative apportionment, is applicable as well to the district-based election of members of the governing boards of local governmental units, such as counties, municipalities, and school districts.

2. Whether that principle, assuming its applicability at the local level, (1) prohibits the use of an election scheme under which members of a local governing board are elected at large but must reside in and declare their candidacy from residence districts, where such residence districts are grossly disproportionate in population, and (2) prohibits the use of a two-step election scheme under which members of a local governing board are elected by an

[2] Only those statutory provisions dealing directly with the manner of selection and the districting for and apportionment of members of the governing bodies involved in these four cases have been set out. Additional provisions not directly involved, such as those defining the powers and duties of the respective governing bodies, are contained in the respective records and presumably will also be set out in the briefs of the parties.

assembly whose members are popularly elected by districts, where such election districts are grossly disproportionate in population.

INTEREST OF THE UNITED STATES

Like *Baker* v. *Carr*, 369 U.S. 186, *Gray* v. *Sanders*, 372 U.S. 368, *Wesberry* v. *Sanders*, 376 U.S. 1, and *Reynolds* v. *Sims*, 377 U.S. 533, and the companion State legislative apportionment cases, the instant cases involve a most important and fundamental right in a democratic society—the right to full and fair participation in government by all citizens on an equal basis. In all of the above-cited cases, because of the far-reaching issues involved, the United States participated *amicus curiae*. We have a similar interest here.

In our view, a citizen's right to a properly weighted vote in the election of members of local governmental bodies is no less important than in the election of State legislators and congressmen. Activities of local governments affect citizens most directly, and involve matters of great significance to millions of Americans. Many programs of the federal government are administered by and through local governments, and billions of dollars of federal funds are provided for their accomplishment. Urbanization and population growth have resulted in a great expansion in demands for governmental services at the local level. Malapportionment at the local governmental level weakens the voice of certain citizens in the processes of these bodies, and dilutes the weight of their vote simply because of where they happen to reside. Malapportionment at the local level may also in part frustrate the intent of

Congress in enacting the Voting Rights Act of 1965, and dim the bright promise of that legislation for many newly enfranchised citizens.

Thus, the interest of the United States in these cases is that of millions of American citizens who are presently denied or may be denied, through malapportionment at the local level, full and effective participation in the processes of the various units of local government. It is the position of the United States that, as a matter of constitutional principle, logic, and sound policy, the equal-population principle of *Reynolds* v. *Sims* applies to local governmental bodies whose members are elected from districts, and requires that those districts be substantially equal in population.

STATEMENT

These four cases come from four different States and involve four different units and three different forms of local government. Nevertheless, their similarities, factual as well as legal, overshadow their differences and, considered together, they present an excellent framework for deciding the central issue here raised.

In each case the complaint was brought by a group of residents, taxpayers and voters of a political subdivision of the State against various State and local officials. In each case the plaintiffs sought a declaration that the statute or charter pursuant to which the members of the particular governing body were elected, by providing for their election on a basis which failed to accord even approximately equal

weight to the vote of each elector, deprived the plaintiffs of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution. They also sought appropriate injunctive and other relief.

Factually, the principal features common to all four cases are: (1) the existence of a unit of local government exercising substantial powers and extending its authority over the plaintiffs and others similarly situated; (2) the election of the members of the governing board of the local unit from prescribed districts or through analogous election schemes; and (3) a system of districting which, by virtue of population disparities, accords the plaintiffs a substantially diluted and debased vote, when compared with the weight of the vote of citizens living elsewhere within the unit, in electing members of the same representative body.

1. No. 491.[4] Suffolk County is governed by a charter adopted by the electors of the county and incorporated into the New York Laws by the State legislature.[5] Under this charter, the executive authority for each town in the county is an *ex-officio* member of the County Board of Supervisors. Thus, in effect, the voters in each of the 10 towns in Suffolk County elect one member of the 10-man County Board. According to the 1960 census, the population of the 10 towns varied from a high of 172,956 in Islip to a low of 1,312 in Shelter Island.

[4] For convenience and simplicity, the four cases will be referred to throughout by their respective docket numbers, instead of names.

[5] Laws of New York, 1958, Ch. 278, Secs. 201-208.

The Board exercises general legislative authority over all matters of county government delegated by the State, including police protection, public works, health and welfare, zoning and planning, and civil defense. It also has the power to make appropriations, levy taxes, and incur indebtedness, and is the policy-determining body of the county.

This action was instituted in July 1962 in the United States District Court for the Eastern District of New York. On February 1, 1965, a three-judge district court, convened at the request of the plaintiffs, found the Board of Supervisors to be an "invidiously disproportionate system" and denied the motion of the defendants that the plaintiffs' action be dismissed. At the same time, the Court denied the plaintiffs' motion for an injunction against the continued operation of the Board, pending legislative or other political action to correct the inequities complained of, and retained jurisdiction (R. 491; 137–138). An appeal of that order by the defendants was dismissed by this Court for want of jurisdiction, in *Griffing* v. *Bianchi,* 382 U.S. 15, presumably because the order below was not a final one. Upon reapplication by the plaintiffs, as provided in the prior order, the district court, on June 15, 1966, ordered the defendant Board of Supervisors to proceed, under an interim arrangement by which the votes of the supervisors would be weighted according to the populations of the districts from which they were elected, to adopt and submit to the electorate a constitutionally valid, permanent plan of apportionment (R. 491; 198–199).

2. No. 624. The governing body for Houston County, Alabama, is called the Board of Revenue and Control. The Board has six members, five who are elected by districts established by the State legislature,[6] and the Judge of Probate, elected at large, who serves as *ex-officio* chairman. According to the 1960 census, approximately 61 percent of the population of Houston County reside in District No. 5, which is coterminous with the city of Dothan and located in the center of the county. The remaining 39 percent are assumed to be fairly evenly distributed among the other four districts, in roughly the same ratios as the distribution of registered voters.[7]

The legislation creating the Board conferred upon it "all the general authority, power and duties now provided, or which may hereafter be provided to Boards of Revenue or Commissioners Courts, under the general laws of the State of Alabama."[8] These powers include authority over the roads, bridges and causeways, responsibility for sanitation, public welfare and general health conditions, control over all county property, including courthouses, jails, hospitals and waterworks, and authority to own and lease real and personal property in order to promote industry and commerce. In order to carry out these functions, it has authority to levy and collect general and special taxes (subject to limitations set by the

[6] Acts of Alabama, Reg. Sess., 1957, No. 9.

[7] Only registered voter, and not total population, figures were available for the other four districts.

[8] Acts of Alabama, Reg. Sess., 1957, No. 9, Sec. 7 (set out in J.S. 624; 33–34).

State), the power of condemnation, and authority to issue revenue bonds.[9]

In a two-to-one decision, the three-judge district court denied the relief sought, apparently relying on three alternative grounds: (1) mere numerical imbalance, without a co-existing "serious wrong," does not amount to an invidious discrimination within the doctrine of *Baker* v. *Carr;* (2) a properly apportioned State legislature can provide an adequate remedy; (3) the Board does not have sufficient legislative powers to warrant the application of the rule of *Reynolds* v. *Sims* (R. 624; 61–63). In addition, the court below indicated its disposition to wait until this Court had definitively decided the question of whether *Reynolds* applies at the local level (R. 624; 62).

3. No. 724. The City of Virginia Beach was formed in 1963 by a consolidation of the former city of that name and all of what previously comprised Princess Anne County, Virginia. That consolidation and the charter under which the city is governed were approved by popular referenda and incorporated into the Virginia laws by the State legislature.[10]

The apportionment of City Council seats under the original charter, which alloted five members to the former City of Virginia Beach and six to the former boroughs of Princess Anne County, was found to be invalid by the United States District Court for the Eastern District of Virginia, on December 7, 1965. However, proceedings were stayed pending legislative action. Thereafter, the City Council submitted a new

[9] Code of Alabama, Title 12, Secs. 11, 12, 16–19, 21–22, 177, 181, 185, 186, 191, 197, 300; Title 29, Sec. 3; Title 51, Sec. 71.

[10] Acts of Assembly of 1962, Ch. 147.

plan to the State legislature and the charter was amended.[11] Under the amended charter the council is composed of eleven members elected under the so-called "7–4 plan". Four members are elected by and from the city at large, and the other seven are elected by the city at large from among the residents of each of the seven boroughs established by the charter.[12] According to the 1960 census, the populations of these boroughs ranged from a high of 29,048 to a low of 733.

The charter granted by the State legislature confers upon the City Council all the powers previously possessed by both the City of Virginia Beach and Princess Anne County. Thus, the Council exercises general legislative authority, which includes the traditional municipal powers and functions and extends over what previously compromised an entire county.[13]

A three-judge court was convened at the request of the plaintiffs, but was dissolved before the ruling was made that the original consolidated council was unconstitutionally apportioned. After the legislature enacted the amended charter into law, the plaintiffs filed an amended complaint attacking the 7–4 plan. The district court found a compelling need for compromise during the period of transition from county to city government, and held that the 7–4 plan did not result in an invidious discrimination against

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[11] Acts of Assembly of 1966, Ch. 39.

[12] This is not a unique method of election. At-large elections with district residence requirements are used to elect the governing bodies in 620 counties throughout the country. See note 24, *infra*, and the discussion in note 88, *infra*.

[13] See also Code of Virginia, Sec. 15–77.1 through 15–77.70.

voters in the more populous residence districts (R. 724; 113–114). However, the Court of Appeals for the Fourth Circuit, in a unanimous decision, found that the 7–4 plan created disproportionate representation and a curtailment of selectivity and, therefore, violated the Equal Protection Clause. The court denied injunctive relief, in view of the proximity of elections, but ordered the district court to retain jurisdiction pending further legislative relief (R. 724; 122).

4. No. 430. The governmental unit involved in this case is the County, or Intermediate, School Board for Kent County, Michigan. The Board is created by the State, without the consent of the residents, to perform various administrative and legislative functions for the State Board of Education. Its authority includes the appointment of a county school superintendent, preparation of an annual budget and levy of taxes, distribution of delinquent taxes, recommendation of library books, conducting cooperative programs with other intermediate school boards, and employment of teachers for special educational programs. In addition, the Board may furnish services or conduct cooperative programs for the 39 "constituent" school districts within its jurisdiction.[14] One of its more sensitive functions, and the one giving rise to this action, is the power to transfer areas from one school district to another.[15]

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[14] Mich. Stat. Ann., Sec. 15.3298(1).

[15] Mich. Stat. Ann., Sec. 15.3461 *et seq.* Part of the relief prayed for in the complaint was the retransfer of certain areas from the Kentwood School District to the City of Grand Rapids School District. See note 96, *infra*.

The County School Board is not elected directly by the voters of the County. Instead, the voters of each of the 39 school districts in the county elect a Board of Education for that district.[16] The five-man County School Board is elected by an assembly consisting of one representative from each Board of Education.[17] Since each member of the assembly has one vote, the net effect is to accord each school district 1/39 of the total voice in electing members of the County School Board. According to the 1960 census, the Grand Rapids School District had a population of 201,777, or about 55.6 percent of the total population of Kent County. Several school districts had a population under 150, the lowest being 99 (R. 430; 163).

In a two-to-one decision, the three-judge district court determined not to anticipate the application of the one-person, one-vote rule to local governments and ruled against the plaintiffs (R. 430; 220–222). That court did not decide the case on the basis of the peculiarities of the two-step election scheme, but viewed the issue presented as the broad one of the applicability of *Reynolds* and related cases at the local governmental level (R. 430; 221; see note 95, *infra*).

ARGUMENT

INTRODUCTION AND SUMMARY

Strictly speaking, the Court's decisions in the four instant cases will relate only to the districting ar-

[16] See Mich. Stat. Ann., Secs. 15.3027, 15.3055, 15.3107, 15.3148, and 15.3188.

[17] Mich. Stat. Ann., Sec. 15.3294(1). A similar assembly is used to approve the County School Board's proposed budget. Mich. Stat. Ann., Sec. 15.3298(1).

rangements for the local governmental bodies involved in these cases. But it would blink reality not to recognize that the constitutional question involved is a broad one and that the holdings here will have implications directly affecting the constitutionality of local government apportionment schemes generally. As we see it, the broad constitutional issue is simply whether the equal-population principle of *Reynolds* v. *Sims*, 377 U.S. 533, and companion and related cases applies to districting at the local level of government. Accordingly, we think it may be helpful, at the outset, to discuss somewhat generally the nature and functions of local governments in order to provide a more general framework for considering and resolving the broad constitutional question.

The variations in the functions, powers and organization of local governments appear so great as to make any categorical statement precarious.[16] However, a few generalizations are possible. For this purpose, the most workable definitions and classifications are those used by the United States Bureau of the Census, the most reliable and convenient source of information and statistics on local government. These definitions and classifications are generally acceptable for our purposes, and are adopted and used here.

[16] For a fuller discussion, see U.S. Department of Commerce, Bureau of the Census, 1962 Census of Governments, Vol. I; International Union of Local Authorities, Local Government in the United States, Recent Trends and Developments 1961; The Municipal Year Book 1966 (Nolting and Arnold ed.). See also the tables included in the Appendix (*infra*, pp. 137–139).

A local government is defined by the Bureau of the Census as:

> * * * [an] organized entity which, in addition to having governmental character, has sufficient discretion in the management of its own affairs to distinguish it as separate from the administrative structure of any other governmental unit.[19]

For purposes of our discussion, we group local governments into three general classes: (1) Counties, municipalities, and townships; (2) School districts; (3) Special districts.[20]

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[19] In the Census Bureau's view, the critical factor is whether the unit has substantial fiscal and administrative autonomy. The power to tax is not, of itself, an essential element, nor is the method of selection—appointment or election—of the body exercising the unit's powers. 1962 Census of Governments, 15–17.

[20] According to 1962 Census of Governments, there were at that time some 91,185 local governments fitting this definition. As the table in Appendix B–I (*infra*, p. 137) shows, of these 91,185 local governments, 3,043 were counties (which figure increased to 3,049 by 1965), 17,997 were municipalities (a large majority of which were relatively small towns and villages), 17,144 were townships, 34,678 were school districts (which figure decreased to 28,814 by 1965), and 18,223 were special districts.

No useful generalization can be made about the size of the governing boards of these governmental units, since the variances from State to State and as between the different kinds of bodies is so great. For instance, county boards in some States are of fixed size, while others vary according to the number of cities, towns, etc., in the county, or, in some respects, according to the population of the subordinate units. Some bodies are as small as three, while others range up close to 100 members, and are thus larger than many State legislative bodies. Similarly, the terms of the members of local governmental bodies vary greatly, from as short as one year to as long as six or eight years.

A. COUNTIES, MUNICIPALITIES, AND TOWNSHIPS

These three units of local government constitute political subdivisions of the State, designed primarily to implement State legislation and State policies and to provide governmental services on the local level. There are, of course, a few characteristics which serve to distinguish these units one from the other. For example, counties and townships are usually established by the State without the consent of the residents, while municipalities are generally established by charters initiated and approved by those inhabiting the area to be incorporated. Municipalities in some States, and also occasionally counties, are organized pursuant to State constitutional or statutory provisions authorizing or conferring "home rule," and have powers of local self-government independent of the State in regard to matters of local concern. Municipal governments generally have broader legislative powers and responsibilities and more autonomy than county governments, while townships are frequently units of government for rural areas and have quite limited powers.[21] Patterns vary across the country as to terminology as well as powers, and depend to a considerable extent on the historical background.[22] How-

[21] Included in the Census Bureau's category of townships, however, are "towns" in the New England States, New York, and Wisconsin, which in their nature and powers are more analogous to counties than to townships generally. See 1962 Census of Governments, 8.

[22] See, *eg.*, U.S. Department of Commerce, Bureau of the Census, Governing Boards of County Governments: 1965, 9–13 (Table 4), for a State-by-State delineation of the various names by which county governing boards are known.

ever, in the context of the instant problem, such differences are properly seen to be only a matter of emphasis. As a general matter, it is not inappropriate to characterize bodies exercising the powers of these units of government—county boards, city councils, and the like—as "little legislatures" and to classify them together.[22]

These governmental units ordinarily have the power to contract, the capacity to sue and be sued, the power of eminent domain, and various taxing powers—primarily, but not solely, involving the levying and collection of property taxes. Their legislative competence may cover some, or all, of the following areas: police and fire protection, zoning and planning, parks and recreation, libraries, hospitals and health services, public welfare, housing and urban renewal, water supply and sewage disposal, highways, streets and street lighting, and miscellaneous services. Where conferred, the governing body's lawmaking powers are generally exercised through the enactment of ordinances.

Of more direct relevance here, these units are almost always governed by elected bodies, although the method of election varies considerably. For counties and townships, the method is often determined by the State constitution or statutes, although sometimes the local unit has the option to change or to select its own system. The method of election for city councils is generally determined by the municipal charter.

[22] See generally 1 McQuillin, Municipal Corporations, chs. 2, 3 (1949); 2 *id.*, chs. 4, 7–10 (1966).

In 533 of the 3,049 counties, all members of the county governing boards are elected at large. In the other 2,516, some or all of the members are either elected by districts or are elected at large with district residence requirements.[24] Comparable statistics are not available for all municipalities and townships.[25] A 1965 survey of 3,052 cities with populations greater than 5,000 showed, however, that 62 percent elect all city council members at large, 21 per-

[24] The following chart is derived from Governing Boards of County Governments: 1965, 3:

Method of selection	Number of counties
All elected:	
At large	533
At large with district residence requirements	580
By districts	1,187
Presiding officer elected at large and others:	
At large with district residence requirements	40
By districts	666
Appointed	12
Other	31

For a State-by-State enumeration, see *id.* at 7. See also the grouping of States, as to methods of electing county governing boards, in the table contained in Appendix B–II (*infra*, pp. 133–139).

[25] A sampling of pertinent statutory provisions in 14 States having large numbers of townships, which accounted for 14,731 townships, showed that only in Wisconsin and Pennsylvania are members of township governing bodies elected by districts. States sampled were: Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin. In some States townships are important units of local government having substantial general powers, while in others they are quite limited in powers and functions.

cent elect all from districts, and 17 percent use a mixed system."[26]

B. SCHOOL DISTRICTS

As a general rule, school districts are initially established by the State, subject to annexation, consolidation or subdivision at the initiative of the residents or by the State itself. Although they are a "single-function" unit, the importance of their role in local government and the breadth of their powers warrant analysis separately from the other special-function units."[27]

School boards—the school districts' governing bodies—have corporate existence, generally determine their own budgets and levy taxes, and often have the power of eminent domain. In addition, they typically draw the boundaries for school zones within the dis-

[26] The Municipal Year Book 1966, 93–95. The 62-percent figure for at-large elections included 56 cities in which council members are nominated by districts.

[27] There has been a steady and dramatic decrease in the number of school districts in the United States in recent years. See 1962 Census of Governments, 4:

School year:	No. of school districts
1961–62	34,678
1959–60	40,064
1956–57	50,454
1951–52	67,355
1941–42	108,579

With the movement to consolidate school districts, particularly in rural areas, in many States, this trend is likely to continue in future years. Indeed, from 1962 to 1965 the number of school districts had further dropped from 34,678 to 28,814. The Council of State Governments, The Book of the States, 1966–1967, 287.

trict, determine school bus routes, control the acquisition and maintenance of plant and equipment, hire and promote faculty and administrative personnel, supervise the planning of curricula and extra-curricular activities, approve the purchase of texts and library books, authorize the use of school facilities for non-school functions and conduct programs to meet special educational needs. Some school boards function on a county-wide basis; others have a more narrowly circumscribed territorial jurisdiction.

No accurate statistics are readily available on the methods used in selecting school board members. However, it appears that over 95 percent are elected, the most notable exceptions being in certain large cities.[28] Moreover, the overwhelming majority of these are elected at large.[29]

C. SPECIAL DISTRICTS

Special districts exist apart from, and are superimposed upon, the regular and traditional governmental subdivisions. They are generally created through the action or at least with the approval of the residents or landowners in the district to be formed (which often cuts across city and county boundaries), and almost invariably under and pursuant to State statutes.

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[28] See "Individual State Descriptions" in 1962 Census of Governments, 243 *et seq.* An estimate is that about 33,600 of the 34,678 are elected.

[29] A sampling of States having large numbers of elected school boards showed that about 90 percent of these are elected at large. States sampled were: California, Illinois, Kansas, Minnesota, Missouri, Montana, Nebraska, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Washington, Wisconsin, and Wyoming.

These districts are generally created to perform a single function, although occasionally they have a broad spectrum of local governmental purposes. The most common functions performed by such units are fire protection (17.6 percent), drainage and water conservation (16.5 percent), soil conservation (13.4 percent) and urban water supply (8.2 percent), but parks and recreation, hospitals, libraries, cemeteries, police protection and a variety of other categories of activity may also be undertaken by special districts. Special districts often are financed through bond issues and, where appropriate, charges for their services, but 9,457 out of the 18,323 in existence in 1962 had the authority to levy property taxes.

The governing board of a special district may be appointed by the Governor or other public officials, or it may consist of county board members or other elected officials serving *ex officio,* or it may be elected by the residents or landowners of the district. In about 9,600, or just over half of such districts, board members are elected, and it appears that a large majority of these are elected at large.[30]

Thus, while the total number of local governmental bodies is almost staggering, a quite smaller number of such bodies—about one quarter of the total—are

[30] See "Individual State Descriptions" in 1962 Census of Governments, 243 *et seq.* A sampling of a few States—Arizona, Arkansas, California, Idaho, Illinois, Nebraska, New Jersey, Oregon, Texas, and Washington—showed that 3,254 out of 4,936 elected governing boards (about 65 percent) are elected at large. A strong correlation exists between special district governing boards which are elected and those having the power to levy property taxes.

elected on a district basis.[21] As we have seen, many of these bodies are not elected at all, and a large percentage of the others are elected at large, and not by districts. Subjecting local governmental bodies to the equal-population principle of *Reynolds* would not, therefore, involve the great numbers supposed if, as we assume, the requirement would apply only where the members are elected on a district basis.[22]

In the succeeding pages we shall argue that, as a matter of consistent constitutional decision-making, logic, and sound policy, the equal-population principle developed in the State legislative apportionment cases is applicable to local governmental bodies whose members are elected by districts. Plainly, the Equal Protection Clause applies no less at the local than at the State level of government. No prior decisions of this Court have held the equal-population principle inapplicable to local governmental bodies. And no meaningful distinctions can be drawn between State legislatures and local bodies insofar as the relevance of the basic constitutional principles laid down in *Reynolds* v. *Sims* is concerned. In addition, the over-

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[21] On the basis of available figures, coupled with rough estimates from samplings made of the situations in various States, it appears that only about 25 percent of the 91,185 local government governing boards are elected, in whole or in part, from districts or, while at large, under schemes including district residence requirements. See also the discussion *infra*, pp. 109–110.

[22] At best, therefore, claims of chaos and confusion because of the sheer number of bodies involved, if *Reynolds* is applicable at the local level of government, are grossly exaggerated, assuming such considerations are at all relevant. See the discussion in note 111, *infra*.

whelming trend in the State and lower federal courts is to hold the equal-population principle applicable at the local level. And, at least in the instant cases, there is no basis for distinguishing between the different kinds of bodies involved. Sound policy considerations support this result, when the role of local government in our democratic system is taken into account. Finally, we point out that, despite the large numbers of bodies potentially affected, applying the *Reynolds* principle at the local level would not create an unmanageable problem for the judiciary.

I. THE EQUAL-POPULATION PRINCIPLE OF REYNOLDS V. SIMS IS LOGICALLY APPLICABLE TO THE LOCAL LEVEL OF GOVERNMENT

In our view, the overriding issue in these cases is whether there are any distinctions between the State and local levels of government which make the equal-population principle of *Reynolds* v. *Sims*, 377 U.S. 533, inapplicable to local governmental bodies. In terms, of course, *Reynolds* and the companion cases construed and applied the Equal Protection Clause in regard to State legislative apportionment arrangements only. And no decision of this Court has definitively settled the question with respect to the local, as distinguished from the State, level of government. Properly considered, however, the applicability of the equal-population principle of *Reynolds* to the local level of government is compelled by logic and is required as a matter of consistent constitutional adjudication.

A. THE EQUAL PROTECTION CLAUSE APPLIES AT THE LOCAL GOVERNMENTAL LEVEL

No serious question can be raised as to the general applicability of the Equal Protection Clause to governmental units subordinate to the State. Actions of such subordinate governmental units have traditionally been regarded as constituting "State action" for Fourteenth Amendment purposes. For example, in *Standard Computing Scale Co.* v. *Farrell,* 249 U.S. 571, 577, the Court plainly stated:

> For the protection of the Federal Constitution applies, whatever the form in which the legislative power of the State is exerted; that is, whether it be by a constitution, an act of the legislature, *or an act of any subordinate instrumentality of the State exercising delegated legislative authority,* like an ordinance of a municipality or an order of a commission [emphasis added]. * * *

In *Cooper* v. *Aaron,* 358 U.S. 1, 16–17, in response to a contention that the actions of the school board and its agents were insulated from constitutional scrutiny since a local body and local officials were involved, the Court stated that "the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, * * * or whatever the guise in which it is taken * * *." Thus, what a State cannot constitutionally do directly, through its legislature, it cannot accomplish indirectly through the delegation of powers to political subdivisions. Again, in *Gomillion* v. *Lightfoot,* 364 U.S. 339, 344, the Court concluded that a State does not

have "plenary power to manipulate in every conceivable way, for every conceivable purpose, the affairs of its municipal corporations * * *." Holding that a redrawing of municipal boundaries on a racial basis deprived Negroes of their right to vote in violation of the Fifteenth Amendment, the Court observed that "[l]egislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution" (*id.* at 344–345). A contrary conclusion, stated the Court, "would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions" (*id.* at 345). Summarizing, the Court stated (*id.* at 347):

> When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.

Under these and a host of other pertinent authorities, it has been established beyond peradventure that governmental action on the local level, no less than on the State level, constitutes a subject appropriate for constitutional scrutiny under the Equal Protection Clause. Insofar as the general applicability of the Fourteenth Amendment to apportionment matters is concerned, therefore, it would seem to make little difference whether the apportionment at issue was one of State legislative seats or, instead, one involving a unit of local government.

B. NO PRIOR DECISIONS OF THIS COURT HOLD THE EQUAL PROTECTION CLAUSE INAPPLICABLE TO THE APPORTIONMENT OF LOCAL GOVERNMENTAL BODIES

It is occasionally suggested that this Court has previously determined that the Equal Protection Clause, and, more specifically, the equal-population principle of *Reynolds* v. *Sims*, is inapplicable to apportionment at the local level of government. Such a view is usually grounded on this Court's decisions in *Tedesco* v. *Board of Supervisors of Elections for the Parish of Orleans*, 339 U.S. 940; *Glass* v. *Hancock County Election Comm'n*, 378 U.S. 558, and *Griffing* v. *Bianchi*, 382 U.S. 15.[23] It is perhaps enough to note that none of these cases involved a decision on the merits, and that any reliance on them for a broad rule as to the inapplicability of the *Reynolds* principle to local government is refuted by the Court's noting probable jurisdiction in the instant cases. Nevertheless, a short discussion of these cases seems warranted, and shows that any reliance on them is misplaced.

Tedesco involved a challenge to the districting scheme pursuant to which members of the New Orleans City Council were elected, and was grounded primarily on the Privileges and Immunities Clause of the Fourteenth Amendment. Finding no violation of constitutional rights, the State courts dismissed the action (see 43 So. 2d 514 (La. Ct. App.)). An appeal to this Court was dismissed for want of

[23] See, *e.g.*, *Johnson* v. *Genesee County*, 232 F. Supp. 567, 569, 572 (E.D. Mich.); *Detroit Edison Co.* v. *East Chind Township School District No. 3*, 247 F. Supp. 296, 300–301 (E.D. Mich.). Compare *Delozier* v. *Tyrone Area School Board*, 247 F. Supp. 30, 33–34, 36 (W.D. Pa.).

a substantial federal question in 1950, long before this Court's decision in *Baker* v. *Carr*, 369 U.S. 186. In *Baker* the Court distinguished *Tedesco* by stating that it "indicates solely that no substantial federal question was raised by a state court's refusal to upset the districting of city council seats, especially as it was urged that there was a rational justification for the challenged districting" (369 U.S. at 235). *Tedesco* was of course one of the line of decisions following *Colegrove* v. *Green*, 328 U.S. 549; *Baker* completely undermined that line of authority, holding that apportionment suits should not be dismissed by federal courts for lack of jurisdiction or nonjusticiability or want of equity. In addition, Mr. Justice Clark, concurring in *Baker*, pointed out that "the Equal Protection Clause was not invoked in *Tedesco* * * *" (369 U.S. at 252, n. 2). And any attempted reliance on the *Baker* characterization of the *Tedesco* districting scheme as having a "rational justification" is, in our view, precluded by the substantive standards enunciated in *Reynolds*. Indeed, the *Baker* Court's handling of *Tedesco* provides, if anything, an affirmative indication that apportionment on the local level is a proper subject for adjudication in the federal courts.[34]

[34] In our view, questions as to subject-matter jurisdiction and justiciability in apportionment cases were definitively settled in *Baker* v. *Carr*, and under *Baker* no distinction can properly be drawn, in this regard, between an attack on the apportionment of State legislative seats and a challenge to districting for seats on a local governmental body. Almost invariably, the courts have so read *Baker*, and have taken jurisdiction and assumed justiciability in local government cases. Several courts have dismissed such suits for want of equity, however, or be-

Glass v. *Hancock County Election Comm'n*, 378 U.S. 558, although decided one week after this Court's decision in *Reynolds*, is likewise of little precedential force. *Glass* involved an appeal from a decision of the Mississippi Supreme Court upholding the dismissal for want of equity of a suit attacking the districting for seats on a county governing board (see 156 So. 2d 825 (Miss. Sup. Ct.)). This Court dismissed the appeal for want of jurisdiction and also denied certiorari. The State Supreme Court had indicated that Mississippi law required districting of county boards on a population basis, that an adequate remedy at law existed to compel redistricting, and that redistricting would in fact be accomplished once the county's population had stablilized (a NASA facility was in the process of being located in the county involved). While under *Lucas* v. *Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 736-737, the availability of a political remedy is no justification for continued malapportionment, in the unique circumstances of the *Glass* case this Court's summary disposition can hardly be given great significance. Some two years later, in *Martinolich* v. *Dean*, 256 F. Supp. 612 (S.D. Miss), a federal court in Mississippi ordered redistricting of Hancock County's Board of Supervisors on a population basis, undeterred by this Court's previous action.

Finally, in *Griffing* v. *Bianchi*, 382 U.S. 15, the Court dismissed "for want of jurisdiction" an appeal

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cause the challenge to the districting was collateral in nature. And several have determined that the substantive standards of *Reynolds* v. *Sims* are inapplicable at the local level of government. See the discussion *infra*, pp. 50-59.

from a decision holding that the Equal Protection Clause applied to apportionment of local governmental bodies, but that the district court would stay its hand pending resort to the political process for correction of the existing malapportionment (238 F. Supp. 997 (E.D.N.Y.)). Dismissal for want of jurisdiction is plainly explicable on the ground that the appeal there taken was not from a final order. Indeed, had this Court disagreed substantively with the district court's holding, such a dismissal would be more difficult to explain.[35]

C. THE CONSTITUTIONAL PRINCIPLES ESTABLISHED IN REYNOLDS AND RELATED CASES ENCOMPASS LOCAL GOVERNMENTAL BODIES AS WELL AS STATE LEGISLATURES

As a matter of consistent and logical constitutional interpretation, the proposition that the equal-population principle of *Reynolds* applies to elected bodies of local government seems virtually self-evident. It would seem rather strange if a State's legislature were required to be apportioned on a population basis under the Equal Protection Clause, but its political subdivisions, exercising delegated State powers, were not subject to a similar constitutional requirement. Indeed, much of the language of the Court in its opinion in *Reynolds*, in articulating the basic constitutional principles, is fully applicable to units of local government. So, also, the fundamental principles shaped and enunciated in *Reynolds'* two pre-

[35] *Griffing* v. *Bianchi*, at a somewhat later stage, is of course before the Court presently as one of the instant cases, No. 491, and the Court's noting of probable jurisdiction seems to undermine whatever significance might be attributed to its earlier dismissal.

cursors, *Gray* v. *Sanders*, 372 U.S. 368, and *Wesberry* v. *Sanders*, 376 U.S. 1, are likewise relevant. In this triumvirate of constitutional decisions implementing substantively the adjudicatory framework grounded on *Baker* v. *Carr*, the Court spoke in broad terms of the right to vote and the nature of representative government.

In *Gray* v. *Sanders*, the Court, holding the Georgia county-unit system invalid, stated that "[t]he idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions" (372 U.S. at 380). In addition, it stated that "there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State" (*ibid.*). In *Reynolds* the Court characterized *Gray* as having "established the basic principle of equality among voters within a State," and as having "held that voters cannot be classified, constitutionally, on the basis of where they live, at least with respect to voting in statewide elections" (377 U.S. at 560).

In *Wesberry* v. *Sanders*, the Court held that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's" (376 U.S. at 7–8). In reaching that result the Court stated that "[t]o say that a vote is worth more in one district than in another would * * * run counter to our fundamental ideas of democratic government * * *" (*ibid.*). And, in language of no less applicability to the instant cases than to congressional districting, the Court added (*id.* at 17):

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

In *Reynolds* the Court referred to *Wesberry* as having "clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State" (377 U.S. at 560–561). This "fundamental principle" is just as applicable to the local level of government, in our view, as to the State and national levels.

The actual holding in *Reynolds* v. *Sims* was that "the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis" (377 U.S. at 568). But the Court's opinion expresses the basic constitutional concepts in such a way as plainly to encompass apportionment, representation and the right to vote at the local, as well as the State, level of government. Early in its *Reynolds* opinion the Court struck the note it was to follow consistently throughout (377 U.S. at 555):

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a

> debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

Restrictions on the right to vote, resulting from unfair districting schemes, "strike at the heart of representative government" at the local level no less than in the election of State legislators. Just as in the State legislative apportionment cases, "the rights allegedly impaired are individual and personal in nature" (*id.* at 561), and here, too, "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights * * *" (*id.* at 562). Again, in language bearing directly on the malapportionment of bodies of local government whose members are elected from districts, the Court in *Reynolds* pointed out (*id.* at 563):

> Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. * * *

Government at the local level, through the medium of bodies whose members are elected by the people, is no less representative government than that involving State legislatures. As the Court in *Reynolds* stated (*id.* at 565):

> But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes

> of his State's legislative bodies. Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. * * *

In our view, the full and effective participation of millions of Americans in representative government at the local level requires that they have an equally effective voice in the election of the members of local bodies. Like State legislatures, local governmental bodies "are responsible for enacting laws by which all citizens are to be governed," and should therefore "be bodies which are collectively responsive to the popular will" (*ibid.*). In regard to representation both at the local level and at the State level, "all voters, as citizens of a State, stand in the same relation regardless of where they live," and are thus entitled to "uniform treatment" insofar as apportionment and districting are concerned (*ibid.*). "Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment" whether representation in a State legislature or in a local governmental body is involved (*id.* at 566).

Under the Court's formulation in *Reynolds*, "the basic principle of representative government" is that "the weight of a citizen's vote cannot be made to depend on where he lives" (*id.* at 567). This constitutional precept is, in our view, directly applicable to bodies of local government elected from districts,

and requires that those districts, like State legislative districts, be substantially equal in population. A contrary holding would not only result in a serious limiting of *Reynolds* and other voting rights cases but would run completely counter to the broad language and reasoning of the Court in that case. Continued malapportionment on the local level of government constitutes, we believe, an indefensible infringement of basic constitutional rights. In a sense, these cases involve the final step in the constitutional evolution that began with *Baker* v. *Carr*.[36] That this is actually a small step, and an almost unavoidable one, seems clear from a consideration of the constitutional principles laid down by the Court in *Reynolds*."[37]

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[36] In his dissenting opinion in *Fortson* v. *Morris*, 385 U.S. 231, 242, Mr. Justice Fortas included a discussion of what he appropriately described as "the basic instrument of democracy—the vote," stating that this Court's apportionment and voting rights decisions "have reinvigorated our national political life at its roots so that it may continue its growth to realization of the full stature of our constitutional ideal" (385 U.S. at 249). Pointing out that "[i]t is the function—the office—the effect given to the vote, that is protected," he noted, in language no less applicable to local elections: "A vote is not an object of art. It is the sacred and most important instrument of democracy and of freedom. In simple terms, the vote is meaningless—it no longer serves the purpose of the democratic society—unless it, taken in the aggregate with the votes of other citizens, results in effecting the will of those citizens provided that they are more numerous than those of differing views. That is the meaning and effect of the great constitutional decisions of this Court" (*id.* at 250).

[37] A suggestion is sometimes made that certain language in the *Reynolds* opinion indicates a view on the part of the Court that the constitutional principles enunciated in that case are inapplicable to units of government subordinate to the State level. In the course of discussing and rejecting the so-called federal analogy, the Court stated (377 U.S. at 575): "Political

Several of the Court's post-*Reynolds* decisions involving voting rights also contain language of no little

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subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions." Thereafter, the Court included a quote from *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 178, relating to the broad powers of a State over local governmental units. Any reliance of this language for the proposition that the equal-population principle of *Reynolds* is inapplicable at the local level of government is, we submit, wholly misplaced. That language was directed solely to the question of whether local units of government bear the same relationship to State government as the States do to the federal government. The obvious conclusion was that they do not, and this provided one of the reasons for the Court's rejecting an argument that an analogy to the federal Congress could be relied upon as justification for apportionment of seats in one of the two houses of a bicameral legislature on a basis other than population. Not only the context of this language but also the concluding sentence of the paragraph in which it appears make its limited scope quite clear; the Court concluded the particular discussion by stating that "[t]he relationship of the States to the Federal Government could hardly be less analogous" (*ibid.*).

Insofar as the broad language of the *Hunter* case is concerned, any thought that *Hunter* could be relied upon for the proposition that constitutional principles are generally inapplicable to local units of government because of their dependence on the States for their very existence is plainly refuted by this Court's reading of *Hunter* in *Gomillion* v. *Lightfoot*, 364 U.S. 339. While recognizing "the breadth and importance" of a State's power "to establish, destroy, or reorganize by contraction or expansion its political subdivisions, to wit, cities, counties, and other local units" (364 U.S. at 342), the Court concluded, as to the limited meaning of *Hunter*, that "a correct reading of the seemingly unconfined dicta of *Hunter* and kindred cases is not that the State has plenary power to manipulate in every conceivable way, for every conceivable purpose, the affairs of its municipal corporations, but rather that the State's authority is unrestrained by the particular prohibitions of the Constitution considered in those cases" (*id.* at 344).

pertinence to the applicability of the equal-population principle of *Reynolds* to local governmental bodies.[35] In *South Carolina* v. *Katzenbach*, 383 U.S. 301, 337, which upheld the constitutionality of the Voting Rights Act of 1965, the Court stated, in regard to the participation of Negroes in the political process as newly enfranchised voters: "Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live." That the bright promise of that legislation might be effectively frustrated, at least in part, through malapportionment of local governmental bodies seems too plain to question. As we develop more fully later (*infra*, pp. 70–72), this consideration provides an added reason for holding *Reynolds* applicable to the local level of government.

It is of course irrelevant, though literally true, that there is no federal right to vote in local elections, in the sense that the federal Constitution does not require popular election, or election by districts, of members of local governmental bodies. Once a de-

[35] Nothing in the Court's decision in *Fortson* v. *Morris*, 385 U.S. 231, indicates, in our view, a retreat from *Reynolds*, at least insofar as its application to local governmental bodies is concerned. *Fortson* simply held the Equal Protection Clause, as construed in *Gray* v. *Sanders*, did not prohibit Georgia from having its legislature select its Governor from those two candidates receiving the most votes in a general election, where neither received the majority required under State law. In finding the challenged procedure constitutionally permissible, the Court concluded that nothing in the federal Constitution dictated "the method a State must use to select its Governor" (*id.* at 234). *Fortson* has no application where a State has established a system of election by districts to determine the composition of a governmental body.

termination is made that an elective system will be used, however, districting must be on a population basis. As this Court said in *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 665, holding Virginia's poll tax unconstitutional: "For it is enough to say that once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." Certainly a State can constitutionally provide that members of local governmental bodies are to be elected at large rather than by districts,[39] or shall be appointed rather than elected, so long as the appointment process is not a discriminatory one. Indeed, for that reason, the principle announced in *Reynolds* is simply inapplicable to many units of local government.[40] But where a State establishes and maintains a local governmental unit which can fairly be said to be intended to be representative in nature, where the State determines that such a body is to be comprised, in whole or in part, of members elected by the people, and where the State utilizes a system of election by dis-

[39] Except where a requirement of residence districts of unequal population is superimposed upon such an at-large election scheme. See *Fortson* v. *Dorsey*, 379 U.S. 433, 437–439, 441, and *Burns* v. *Richardson*, 384 U.S. 73, 88; see also the discussion *infra*, pp. 86–92.

[40] As discussed *infra* (pp. 109–110), the present structure of local governmental bodies is such that probably fewer than one quarter of the units presently in existence are so organized so as to fall within the category of bodies to which, in our view, the equal-population principle of *Reynolds* might be applied.

tricts for determining the members of such a body,[41] the equal-population principle, we submit controls. In that situation, the Equal Protection Clause requires that such districts be substantially equal in population, thus assuring the right to cast a properly weighted vote in local elections.

Narrowly construed, *Reynolds* v. *Sims* is a State legislative case, while the bodies whose apportionment is here at issue do not function statewide. But no differences in the nature of the governmental entities, nor in the elective process by which their members are determined, suggest that a contrary result should be reached in the instant cases. Where the State has given its citizens the right to expresss their collective will in designating the membership of a governmental body, it may not, consistent with *Reynolds'* construction of the Equal Protection Clause, classify them on any basis other than population. Those few courts which have found *Reynolds* inapplicable to local bodies and the defendants below in the instant cases have consistently sought to distinguish *Reynolds* on the facile ground that the governmental units involved were not State legislatures.[42] Such a distinction lies at the heart of virtually every argument which can be made against applying *Reynolds*

[41] By a "system of election by districts" we mean an arrangement under which members of local bodies are elected either directly or indirectly by those residing in various prescribed areas, or, although elected at large, have primary affiliations with a particluar segment of the electorate. See the discussion *infra*, pp. 86–92, 95–99.

[42] See the cases discussed in notes 46 and 56, *infra*.

to the local level of government."[48] It is a distinction, we submit, having no constitutional significance in relation to the question here involved. The constitutional rule enunciated in *Reynolds* did not derive from factors inherent in or peculiar to State

[48] Among the arguments raised against applying *Reynolds* to local governments are suggestions that control over local elections is reserved to the States under the Tenth Amendment and is a matter within the "plenary power" of the States. Both suggestions are merely variations of the argument that the United States Constitution neither grants nor guarantees the right to vote in local elections. Although this is a truism the proposition that States may therefore confer the right of suffrage in an unequal manner is, because of the Fourteenth Amendment, a *non-sequitur*. The Tenth Amendment is simply declaratory of the relationship existing between the State and federal governments, and does not allow a State to exercise its reserved powers however it sees fit, in violation of personal and individual rights protected by the Fourteenth Amendment—indeed, that Amendment reserves powers not only to the States but also "to the people." And use of the term "plenary power" substitutes rhetoric for analysis and simply adds confusion. Plenary is not a synonym for absolute and the Fourteenth Amendment places qualifications and limitations on the scope of State authority. Although the State has the option of providing for elected or appointed local governmental bodies, it is without discretion to distribute the right to vote unequally among its electorate. And it is of no constitutional consequence that provisions of the State constitutions were involved in *Reynolds* and the accompanying cases, whereas State or local statutes are involved in these four cases—except to the extent that remedies can more easily be fashioned when complex constitutional amendment procedures need not be invoked. The impairment of the right to vote is just as acute whether the apportionment is accomplished by the State's constitution or by its statutes or by local laws.

It is also argued that *Reynolds* is distinguishable because States have "sovereignty"—having retained all which was not relinquished to the federal government—while local units are mere political subdivisions, created by the State and exercising

legislatures. In *Baker* v. *Carr*, the Court expressly rejected the argument that apportionment questions were constitutionally cognizable under the Guaranty Clause (369 U.S. at 218–226, 228–229). Rather, under and since *Baker*, it has been the Equal Protection Clause which has provided the constitutional touchstone for assaying the fairness of the relationship between the composition of a governmental body and the individual voter. No significant difference exists, in our view, between the elective process at the State, as distinguished from the local, level.[44] At whatever level, such a system of election contemplates representation of the applicable constituency in the body being elected. It is the right to vote for mem-

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delegated authority. But again the distinction is without constitutional relevance to the issue presented here. Sovereignty is an elusive concept, at best, and can be exercised only by agents of the State. It cannot be that the State legislature exercises sovereignty when it apportions itself but not when it apportions local governmental bodies or delegates that task to the local units. In each instance, it is the State which acts and such action is similarly subject to scrutiny under the Equal Protection Clause, which says nothing about sovereignty.

[44] That the States are sovereign entities, and that they exercise inherent and not delegated powers, under the Tenth Amendment, were not relevant considerations insofar as the conclusions reached by the Court in *Baker* and *Reynolds* are concerned (see 377 U.S. at 564, 574). Arguments that local governmental bodies are outside the equal-population principle of *Reynolds* since they are not sovereign (some constitutional home-rule municipalities do have incidents of sovereignty, however) and exercise delegated powers as creatures of the States are thus, in our view, inapposite in regard to whether the Equal Protection Clause requires the election of the members of such bodies from equally populated districts, when an election-by-district scheme is established under State law.

bers of a representative body which is given Fourteenth Amendment protection in *Reynolds*. If the Equal Protection Clause requires that State legislators be elected from equally populated districts, it requires, by the same token, that members of local bodies be elected on a similar basis.

D. THE TREND OF AUTHORITY IN THE STATE AND LOWER FEDERAL COURTS OVERWHELMINGLY SUPPORTS APPLICATION OF THE REYNOLDS' EQUAL-POPULATION PRINCIPLE TO LOCAL GOVERNMENTAL BODIES

Litigation challenging the apportionment of local governmental bodies has, in the wake of *Baker* and *Reynolds*, reached substantial proportions.[45] Significantly, the conclusion reached by an overwhelming number of courts which have considered the matter is that the equal-population principle of *Reynolds* applies no less at the local than at the State level of government. At least seven State courts of last resort which have considered the question have reached that conclusion,[46] and provide convincing support for

[45] As an aftermath of *Reynolds* and the companion cases, cases involving challenges to the distribution of voting strength for the election of members of local governmental bodies have been decided in more than 30 State and federal jurisdictions. A predominant number of these cases have involved county governing boards, a lesser number city councils, still fewer county school boards, and several other sorts of local bodies (see the discussion, *infra*, pp. 49–51).

[46] California, New York, Wisconsin, Minnesota, Maryland, Missouri and South Dakota, in the following decisions: *Miller* v. *Board of Supervisors*, 405 P. 2d 857 (Calif. Sup. Ct.); *Seaman* v. *Fedourich*, 209 N.E. 2d 778 (N.Y. Ct. App.); *State ex rel. Sonneborn* v. *Sylvester*, 132 N.W. 2d 249 (Wis. Sup. Ct.); *Hanlon* v. *Towey*, 142 N.W. 2d 741 (Minn. Sup. Ct.); *Montgomery County Council* v. *Garrott*, 222 A. 2d 164

the position here taken." Both the tide of decision and the analysis and reasoning which have led the State courts in this direction argue persuasively, we submit, that this Court should approve and endorse the efforts being made to give vitality and consistent application to the principles enunciated in *Reynolds*."[47]

(Md. Sup. Ct.); *Armentrout* v. *Schooler*, 409 S.W. 2d 138 (Mo. Sup. Ct.); *Bailey* v. *Jones*, 139 N.W. 2d 385 (S. Dak. Sup. Ct.).

Insofar as we can determine, only two State courts of last resort have reached an inconsistent result. In *Brouwer* v. *Bronkema*, 141 N.W. 2d 98, and *Knudsen* v. *Klevering*, 141 N.W. 2d 120, the Michigan Supreme Court divided evenly, the effect of which was to uphold the challenged arrangements against constitutional attack (see 141 N.W. 2d at 123). And in *Avery* v. *Midland County*, 406 S.W. 2d 422, pending on petition for certiorari, No. 958, this Term, the Texas Supreme Court held *Reynolds* inapplicable in a case involving a county governing board apportioned on a basis grossly disproportionate to population, although finding the existing districting arbitrary and irrational on State law grounds. In *People* v. *O'Neill*, 210 N.E. 2d 526, the Supreme Court of Illinois held that the apportionment of a county governing board could not be collaterally attacked by asserting its alleged malapportionment in defense of an action to recover unpaid taxes, relying on the *de facto* doctrine and without reaching the question of the application of the equal-population principle at the local level. Similarly, in *Davis* v. *Dusch*, 139 S.E. 2d 25, at an earlier stage of the litigation involved in one of the instant cases, No. 724, the Virginia Supreme Court of Appeals denied mandamus seeking to compel reapportionment of city council seats, on State law grounds and without reaching or discussing any federal constitutional questions.

[47] Several courts have, however, determined to await direction from this Court as to whether *Reynolds*' equal-population principle applies at the local level of government. Included in that group are the lower federal courts in two of the instant cases, Nos. 430 and 624, both splitting two-to-one on that question, and the Michigan Supreme Court in the cases cited in note 46, *supra* (see 141 N.W. 2d at 107, 119–120, 121–123). See the discussion in note 54, *infra*.

A notable example is the decision of the New York Court of Appeals in *Seaman* v. *Fedourich*, 209 N.E. 2d 778.[48] In that case, involving a challenge to the districting for election of members of the Binghamton Common Council, the court stated (209 N.E. 2d at 782) that "[t]here can be little doubt * * * that [the 'one person, one vote'] principle is applicable to elective legislative bodies exercising general governmental powers at the municipal level * * *." It reasoned (*ibid.*):

> It is axiomatic that local governmental units are creations of, and exercise only those powers delegated to them by, the State * * * and, cer-

[48] Local government in New York has been undergoing a veritable revolution, insofar as the correction of existing malapportionment is concerned, in the wake of *Reynolds*, spurred on by the Court of Appeals' decision in the *Seaman* case. Most of the litigation has involved county boards of supervisors, but city councils have been concerned also in some of the cases. State court decisions on local government apportionment in New York include: *Goldstein* v. *Rockefeller*, 257 N.Y.S. 2d 994 (Sup. Ct., Monroe Co); *Augostini* v. *Laskey*, 262 N.Y.S. 2d 594 (Sup. Ct., Broome Co.); *Barzelay* v. *Board of Supervisors*, 263 N.Y.S. 2d 854 (Sup. Ct., Onondaga Co.); *Treiber* v. *Lanigan*, 264 N.Y.S. 2d 797 (Sup. Ct., Oneida Co.); *Dona* v. *Board of Supervisors*, 266 N.Y.S. 2d 229 (Sup. Ct., St. Lawrence Co.); *Town of Greenburgh* v. *Board of Supervisors*, 266 N.Y.S. 2d 998 (Sup. Ct., Westchester Co.); *Shilbury* v. *Board of Supervisors*, 260 N.Y.S. 2d 931 (Sup. Ct., Sullivan Co.), affirmed *per curiam*, 267 N.Y.S. 2d 1022 (App. Div.); *Davis* v. *Board of Supervisors*, 273 N.Y.S. 2d 133 (Sup. Ct., Clinton Co.); *Graham* v. *Board of Supervisors*, 267 N.Y.S. 2d 383 (Sup. Ct., Erie Co.), affirmed, 278 N.Y.S. 2d 419 (Ct. App.); *Morris* v. *Board of Supervisors*, 273 N.Y.S. 2d 453 (Sup. Ct., Herkimer Co.). Several lower federal court decisions involving subordinate New York units of government are discussed *infra*, pp. 53–54. See also *Lodico* v. *Board of Supervisors*, 256 F. Supp. 442 (S.D.N.Y.).

tainly, if the latter may exercise its legislative powers only in a body constituted on a population basis, any general elective municipal organ to which it delegates certain of its powers must, by a parity of reasoning, be subjected to the same constitutional requirement. Viewed in another way, if, as seems evident, the thrust of the Supreme Court's decisions is that it is inherent within the concept of "equal protection" that a person has a substantial right to be heard and to participate, through his elected representatives, in the business of government on an equal basis with all other individuals, no reason or justification exists for differentiating, so far as that right is concerned, between the general governmental business carried on in the highest legislative organs of the State and that conducted, by virtue of a delegation of authority, in municipal law-making bodies."

Also worth noting is the statement of the Attorney General of New York, set out in *Goldstein* v. *Rockefeller*, 257 N.Y.S. 2d 994, 1000–1001 (N.Y. Sup. Ct., Monroe Co.), that "the trials, inconvenience and evil of upheaval due to the application of the * * * [equal-population principle] are less to be feared, if

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" See also the lower court opinion in *Seaman*, stating (258 N.Y.S. 2d 152, 155): "That the 'one person, one vote' principle is applicable to the apportionment of elected members of legislative bodies of governmental units below the level of state legislatures can no longer be doubted"; and see *Shilbury* v. *Board of Supervisors*, 260 N.Y.S. 2d 931, 935 (Sup. Ct., Sullivan Co.), referring to "a recent avalanche of judicial opinion definitely indicating [the] constitutional invalidity" of a local government apportionment scheme not based on population, and *Morris* v. *Board of Supervisors*, 273 N.Y.S. 2d 453, 455 (Sup. Ct., Herkimer Co.).

met with intelligence, cooperation and good will, than the evil of a constantly increasing and more acute imbalance of representation of citizens in their local legislative bodies due to the failure to apply the proposition."

California, our most populous State, has joined New York, the second largest, in applying *Reynolds* to local governmental bodies. In *Miller* v. *Board of Supervisors*, 405 P. 2d 857, 860, the California Supreme Court stated: "Although we are not here dealing with voting apportionment at the level of the state legislature, * * * no reason appears why equal protection assures representative voting to the electors of the State of California as a whole but not of the County of Santa Clara." Subsequently, in *Wiltsie* v. *Board of Supervisors*, 419 P. 2d 440, 441, that court, in another county board apportionment case, noted that its holding in *Miller* was grounded not only on a State statutory provision, but "more particularly on the constitutional mandate of the equal protection clause * * *."[50]

One of the earlier State court decisions holding the equal-population principle applicable to local governmental bodies is that of the Wisconsin Supreme Court in *State ex rel. Sonneborn* v. *Sylvester*, 132 N.W. 2d 249. In the face of various arguments for inapplicability, that court stated that "[t]he right to vote whether statutory or constitutional to mean anything

[50] Several earlier California Supreme Court decisions in county board apportionment cases were grounded on State not federal law. See *Griffin* v. *Board of Supervisors*, 394 P. 2d 421, 388 P. 2d 888; *Henderson* v. *Superior Court of Marin County*, 390 P. 2d 206.

in a representative government means the right to secure equal representation," and that "county boards possessing the type of legislative power which they do must be considered a unit of government which should be equally representative of the people of the county" (132 N.W. 2d at 255). That county boards are statutory creatures of the legislature, the Wisconsin court continued, is "not determinative of whether the 14th Amendment applies to their composition when the members of a county board are determined by the elective process" (*ibid.*).[51] It concluded (*id.* at 255, 256):

> Since the basic principle of representative government is that the weight of a citizen's vote cannot be made to depend on where he lives, then county boards as units of representative government should not be constitutionally immune from the requirements of the 14th Amendment. * * *
>
> * * * Since the composition of the legislature must conform to the principle of equal representation, it is logical that the arm or political subdivision of such legislature enacting legislation should be governed by the same principle of equal representation.

In *Bailey* v. *Jones*, 139 N.W. 2d 385, the South Dakota Supreme Court, after considering *Baker* and

[51] In the course of its opinion the Wisconsin court posed this question (132 N.W. 2d at 256): "Can it be successfully argued today that the legislature could provide for the election of supervisors of the county board on the basis of race, creed, or color? We think not. Nor do we believe that an increase or dilution of the weight of votes on the basis of political subdivisions or of the character of the area in which people live can be justified by the plenary-power argument."

Reynolds and discussing the functions and powers of county governing boards in that State, concluded (139 N.W. 2d at 388):

> Boards of County Commissioners are representative of the people and by parity of reasoning the concepts of equal protection as delineated by, and in conformity with, the decisions of the United States Supreme Court applies to them.

Likewise, in concluding that the Equal Protection Clause requires districts for the election of members of county governing boards to be equal in population, the Minnesota Supreme Court stated, in *Hanlon* v. *Towey*, 142 N.W. 2d 741, 745:

> Despite the absence of any specific constitutional provision requiring apportionment of state legislative districts on an equal-population basis, these decisions [*Baker, Gray,* and *Reynolds*] make it unmistakably clear that the site of a citizen's home—like race, creed, or color, and most recently, affluence—does not afford a permissible basis for distinguishing between qualified voters within the state. While it is true that no decision of the United States Supreme Court has yet applied the equal protection principle to "local legislative bodies in a state," there is every indication that the right to vote for representatives upon a county board as presently constituted in our state does have constitutional significance. The language of the decisions affords appellants little comfort and indeed no discernible support for their claim that the legislative power over apportionment of voters vested with the electoral control

> of county government is absolute, untrammeled by constitutional restraint.

While noting that the legislature could withdraw county government from electoral control and provide for the appointment of local officials, the Minnesota court observed that "so long as the present system of a representative form of government is maintained, the fundamental nature of the right to vote inescapably requires the application of fundamental principles" (*id.* at 746).

Two rather recent decisions of the Maryland Court of Appeals—*Montgomery County Council* v. *Garrott*, 222 A. 2d 164, and *Gray* v. *Board of Supervisors of Elections of Baltimore County*, 222 A. 2d 176—held the equal-population principle of *Reynolds* applicable to local governmental bodies. In its opinion in the *Montgomery County Council* case, the Maryland court concluded (222 A. 2d at 166): "There remains little doubt that the one man, one vote principle, so fully articulated in Reynolds v. Sims, * * * is now applicable to political subdivisions of a state."

Finally, in *Armentrout* v. *Schooler*, 409 S.W. 2d 138, the Missouri Supreme Court, observing that the city council involved in that litigation exercised general governmental powers, stated (*id.* at 143):

> The fact that cities are created by the legislature, do not derive their power from the people affected, and occupy a subordinate position in the hierarchy of government does not detract from the principle that in a representative government the people are entitled to equal representation. As a matter of logic voters selecting their representatives to sit on a municipal leg-

islative body are entitled to the same equal protection in the exercise of their right of suffrage as that enjoyed by voters on the state level selecting their state senators and representatives in the state and national legislative bodies; are entitled to full and equal voice in the choice of their representatives on the city council without dilution or diminution of the weight of their individual votes because of the ward in which they happen to reside."[32]

[32] Mention should also be made of several lower court decisions which contain a discussion of the question of the applicability of the equal-population principle to local governmental bodies. In *Brouwer* v. *Bronkema*, 13 Court Decisions on Legislative Apportionment (National Municipal League) (hereinafter "C.D.L.A.") 81 (Kent Co., Mich. Cir. Ct.), subsequently reviewed and reversed by an evenly divided Michigan Supreme Court (141 N.W. 2d 98, 123; see note 46, *supra*), a careful articulation of the constitutional principles is set forth. In that opinion, in what appears to be the first local government case to reach judgment after this Court's decision in *Reynolds*, the Circuit Court found "persuasive" the argument that the Equal Protection Clause requires that county board seats must be apportioned on a population basis. In support of this conclusion, several analytical steps were relied upon (13 C.D.L.A. at 95): 1) "The Fourteenth Amendment applies to the State and to every governmental agency or instrumentality of the State which exercise powers delegated to it by the State"; 2) "The County is a governmental instrumentality or division of the State and the board of supervisors is the legislative body of the County. That board exercises legislative powers delegated to it by the State"; and 3) "The State may exercise its legislative powers only in a legislative body apportioned on a population basis and if it delegates a part of those powers, it must do so to a legislative body apportioned to the same 'basic constitutional standard'." Repeated reference has been made to this reasoning by other courts considering the question. The remaining part of the circuit court's lengthy opinion involves a detailed consideration and refutation of various contrary arguments made against the applicability of the equal-population

Lower federal as well as State courts have been involved in local government apportionment controversies during the past few years, and the trend of decision in those courts has been the same. Several of these federal court decisions, apart from those in the instant cases, are worth noting in regard to the analysis utilized in concluding that the equal-population principle applies at the local level of government. In *Ellis* v. *Mayor and City Council of Baltimore*, 234 F. Supp. 945 (D. Md.), decided several months after this Court's decision in *Reynolds*, the district court assumed the applicability of the equal-population principle to local governmental bodies, and stated (234 F.

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principle to local bodies. In concluding, that court stated (13 C.D.L.A. at 112): "It is the 'supreme law of the land' that each 'person' have equal representation in the legislative body in which the legislative power of the State is exercised and such right requires that the membership of such body be apportioned on a population basis. A part of the legislative power of the State is delegated to and exercised by County Boards of Supervisors. That Board, like its parent body, the State Legislature, must be apportioned on a population basis if all persons in the County are to have equal representation therein."

Similarly, the decision of the Superior Court of New Jersey, Chancery Division, in *Mauk* v. *Hoffman*, 209 A. 2d 150, should be mentioned. Holding that the equal-population principle applies to county governing boards, and that the boards of three counties there at issue were "clearly malapportioned," that court stated that "[i]t could not seriously be contended otherwise," and continued (209 A. 2d at 152): "Since the basic principle of representative government, as stated in the Reynolds case, * * * is that the weight of a citizen's vote cannot depend on where he lives, the composition of the boards of freeholders should comply with the Fourteenth Amendment. A county is generally considered a political subdivision or agency of the State. * * * If the State Legislature must conform to the principle of equal protection, it is logical that the 'county legislature' should conform to the same principle."

Supp. at 950): "Manifestly, plaintiff's right to equal protection of the laws in his representation in the City Council is being presently denied * * *." In affirming that decision, the Fourth Circuit Court of Appeals, the only federal appellate court to pass directly on the question of the applicability of *Reynolds* to local government apportionment,[35] stated that the relevance of the Equal Protection Clause to districting for city council seats "could not successfully be * * * contested in this appeal, for the 'one man, one vote' principle * * * logically applies to councilmanic no less than to statewide apportionment" (352 F. 2d 123, 124).

In *Delozier* v. *Tyrone Area School Board*, 247 F. Supp. 30, 34–35 (W.D. Pa.), the court explained its

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[35] In *Lynch v. Torquato*, 343 F. 2d 370, the Third Circuit found the equal-population principle inapplicable to a political party's local committee organization, a matter discussed in note 110, *infra*. But see 343 F. 2d at 372, where that court stated: "But the citizen's constitutional right to equality as an elector, as declared in the relevant Supreme Court decisions, applies to the choice of those who shall be his elected representatives in the conduct of government * * *." Also, in *Simon* v. *Landry*, 359 F. 2d 67, the Fifth Circuit reversed and remanded a district court decision not to convene a three-judge court in a local government apportionment case (see *Simon* v. *Lafayette Parish Police Jury*, 226 F. Supp. 301 (W.D. La.)), without reaching the constitutional questions involved (359 F. 2d at 68), and certiorari was denied by this Court, 385 U.S. 838. *Simon* is discussed further in notes 56 and 131, *infra*. Of course, in one of the instant cases, No. 724, the Fourth Circuit, following its holding in the *Ellis* case, again applied the equal-population principle to a local governmental body, there the Virginia Beach City Council (see the discussion *infra*, pp. 84–92).

reasons for applying the equal-population principle to the election of school boards:

> Nor do we believe that the status of a local school district, being an arm or agency of the state legislature to administer its educational system makes it immune from the constitutional requirement. Admittedly the state legislature could administer its school system other than by local elective boards. * * * .
>
> [But] [t]he legislature of the State of Pennsylvania has delegated the management of its educational system in local areas to local school boards. These boards, in the class of school district in the present case, and in most other classes, are elected by popular vote. The state has also delegated to such boards the power to levy taxes, and in most local communities the various taxes levied by the school boards are the largest local tax imposition. While school boards are subject to numerous limitations in the exercise of local powers, these limitations are no less in scope or variety than the limitations imposed on other governmental subdivisions or municipal corporations. * * *

In the sequel to the earlier *Glass* case (see *supra*, p. 28), *Martinolich* v. *Dean*, 256 F. Supp. 612 (S.D. Miss.), the court concluded that "plaintiffs are entitled to have this court require that the shocking disparity of population among the supervisors' districts of Hancock County be corrected" (*id.* at 616), and stated that "[i]t is a sad commentary on local political leadership that this situation, which we find to be invidious discrimination within the meaning of *Baker* v. *Carr* and its progeny, must now be

dealt with by a federal court rather than by the people and officials of Hancock County, Mississippi" (*id.* at 614–615). Similarly, in a federal court case involving a Mississippi county governing board, Judge Mize, in an unreported decision (*Damon* v. *Lauderdale County Election Comm'rs*, 13 C.D.L.A. 140 (S.D. Miss.)), concluded that "the Fourteenth Amendment is applicable to redistricting counties as well as the legislatures of the various states," relying extensively on the earlier Michigan circuit court decision and opinion (discussed in note 52, *supra*).

In *McMillan* v. *Wagner*, 21 C.D.L.A. 102, 109 (S.D.N.Y.), the court stated:

> We conclude that the Fourteenth Amendment allows no distinction between a New York State resident's right to be equally represented in the State Legislature, and a New York City resident's right to be equally represented on the Board of Estimate. Both residents are given by New York law the right to vote for representatives to a body possessing state governmental powers. When this governmental body meets, the Fourteenth Amendment requires that each citizen be afforded equal representation.

And in *Blaikie* v. *Wagner*, 258 F. Supp. 364 (S.D.N.Y.), although upholding the districting for seats in the New York City Council despite some departures from population-based representation, the district court nevertheless stated (258 F. Supp. at [redacted]):

> Although there were decisions of the Supreme Court which would have supported a contrary result and although persuasive arguments can

> be made to the effect that government at such levels should be by the people and not by the judiciary, the decisions of various courts, State and Federal, so overwhelmingly point to the [equal-population] principle's application at County and City levels that in *Bianchi* this particular Rubicon was crossed. Furthermore, logic, for whatever merit it may have in this situation, is persuasive against a re-crossing. Concededly, the City Council is the legislative body enacting laws affecting the lives of over eight million people—a population far greater than that of many States.

Finally, in *Strickland* v. *Burns*, 256 F. Supp. 824 (M.D. Tenn.), a county school board apportionment case like *Delozier* (discussed *supra*, pp. 51–52), the district court rejected the argument that the Equal Protection Clause "does not require that local representative government, or at least a local representative governmental body which is primarily administrative rather than legislative in character, conform to the 'one man, one vote' standard of Reynolds v. Sims * * *" (*id.* at 825), and stated (*id.* at 826):

> In *Reynolds* and the related cases, the Supreme Court held that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people and that any system of apportionment by which the weight of a citizen's vote is diluted when compared with the votes of citizens living in other areas is violative of rights secured by the Equal Protection Clause. *Reynolds* was decided in the context of state legislative apportionment and * * * the Court emphasized the fact that state legislatures are, historically, the

fountainhead of representative government in this country. Nevertheless, the rationale of the *Reynolds* decision, that is, that it constitutes invidious discrimination to dilute the efficacy of votes because of the residence of the voters, is logically as applicable to the backwaters of representative government at the local level as to the fountainhead of representative government at the state level.

Concluding, the court stated (*id.* at 827):

> * * * [W]e can find no basis for applying the "one man, one vote" rule to the congeries of powers possessed by the Legislature itself and at the same time denying its application to a subordinate body simply because it possesses a fractional part of those powers, so long at least as the fractional part cannot be said to be insignificant or unimportant * * *.

Some of the opinions in the instant cases likewise elaborate the reasons for concluding that the equal-population principle of *Reynolds* applies at the local level of government. In the Suffolk County case, for instance, the court stated (R. 491; 134): "In county-wide administration, just as in state-wide administration, the inhabitants of the populous areas should not be governed by representatives drawn from other and thinly populated areas." It added (R. 491; 134):

> It is not for this court to speculate about the type of representative government Suffolk County should have. Suffice it to say that the Board of Supervisors is constituted to serve as the legislative body for the County and, under the present undisputed population disparity, it is not representative of the voters

of the County as the Supreme Court has indicated is required of legislative bodies under the Equal Protection Clause.

Similarly, in the Virginia Beach City Council case, the Fourth Circuit concluded (R. 724; 119): "The principle of one-person-one-vote extends also to the level of representation, and exacts approximately equal representation of the people—that each legislator, State or municipal, represent a reasonably like number in population."

In the other two pending cases, Nos. 430 and 624, the three-judge courts split two-to-one on the question of the present applicability of the equal-population principle to local governmental bodies. In both instances the majority relied heavily upon the fact that this Court had not yet passed upon the issue.[*] In

[*] In No. 430 the majority noted that "[t]he matter of malapportionment of boards and agencies of the states and their subsidiaries has not yet been before the United States Supreme Court" (R. 430; 220), and stated: "We recognize that the Supreme Court of the United States may at some time in the future reach the conclusion that the District Courts of the United States have the power and duty to prescribe guide lines for the selection of the many boards and commissions created and organized in connection with local government. We are satisfied that the Supreme Court of the United States has not yet reached that point. We are satisfied that we should not anticipate that the Supreme Court will reach that point" (R. 430; 221). Similarly, in No. 624 the majority stated (R. 624; 62): "It is not for us to forecast the likelihood that the Supreme Court will ultimately extend the principles of *Reynolds* * * * to the tens of thousands of subordinate political units of the states to which have been delegated some power to which the label 'legislative' may be attached. Some courts have essayed to do so, while others have been content to await the development of judicial standards in this comparatively uncharted area of constitutional law. A warning to make haste slowly may be read into refusal by the Supreme Court on two occasions to

both there were thoughtful and vigorous dissents developing the reasons supporting the applicability of *Reynolds* at the local level."

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consider cases [citing *Glass* and *Tedesco*, discussed *supra*, pp. 26–28] involving the contention that the federal constitution requires local governmental bodies below the state level apportioned on a population basis." On the other hand, it is fair to say that both of the panel majorities inclined toward the view that the equal-population principle of *Reynolds* should not be held applicable at the local level (see R. 430; 221; R. 624; 64).

"In No. 430, Judge Fox explained his views as follows (R. 430; 214-215):

> We are not here concerned with the nature or structure of governmental units as such. The relevance of "one man, one vote" to the present case is not an extension of the rule laid down by *Reynolds* v. *Sims* * * *, but, rather it is a precise application of *Reynolds* to its intended purpose—to secure a constitutionally protected right to individual citizens. Under the authority of *Reynolds* and other decisions of the United States Supreme Court * * *, I can see no warrant to arbitrarily cut off the citizens' right to fair representation at the county level.
>
> Since the majority opinion differs substantially as to the consequences of my conclusion, it may be well at this point to indicate exactly what is and what is not involved here. This is not a situation in which the legislature has appointed a commission or board—no one is contending for a right to vote for appointed officials. The legislature has not chosen to appoint Boards for each of the Intermediate School Districts in the State of Michigan, in which case the function of providing for public education would be delegated, but not, legislatively speaking, the responsibility. For in that situation, the legislature would have delegated the function of providing for public education, but the appointees would have been directly responsible to the legislature, an equally apportioned body directly responsible to the people.
>
> But here the legislature has delegated not only the function, but also the responsibility, which would not be objectionable but for the gross malapportionment in the existing

A comprehensive review of the pertinent State and lower federal court decisions[58] thus indicates that the overwhelming weight of authority supports the view

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system of selecting the Board. For under that system the members of the Board are not directly responsible to the legislature, but to the people by reason of the vote which the legislature has given them * * *. Since the vote is not given on a fairly apportioned basis, the responsibility is fractionalized, and the Board is, in effect, more responsible to the minority than to the majority.

In the Alabama county board case, Judge Johnson stated (R. 624; 65–66):

> I think the conclusion is inescapable that the principles of *Reynolds* v. *Sims*—that is, the principles of equality among voters within a state and the fundamental precept that representative government is one of equal representation for an equal number of people without regard to race, sex, economic status, or place of residence—apply to these local organs of government. These boards of revenue perform important governmental functions, and are designed to be controlled by the voters over which they have jurisdiction. * * * [I]n discharging their duties, the boards are no less representative or reflective of the views of the citizens because they are smaller than the state unit. To the contrary, rather than limit the principles of *Reynolds*, as the majority opinion does, it would seem that these principles might well have their most meaningful application at the local level. Viewed another way, if, as seems evident, the thrust of the Supreme Court decisions is that it is inherent within the concept of "equal protection" that a person has a substantial right to be heard and to participate, through his elected representatives, in the business of government on an equal basis with all other individuals, no reason or justification exists for differentiating so far as that right is concerned, between governmental business carried on at the state level and that conducted on the local level.

[58] Apart from the cases previously discussed, a few lower federal courts have concluded that the equal-population principle does not apply to local governmental bodies. See *John-*

that the equal-population principle of *Reynolds* is applicable to local governmental bodies. And the analysis and reasoning engaged in by these courts convincingly demonstrate that this is the only logical and constitutionally sound conclusion, and that no meaningful distinction can be made, in terms of the requirements of the Equal Protection Clause, between the right to vote in State legislative and in local governmental elections.

E. A BREAK WITH REYNOLDS IN THE INSTANT CASES WOULD HAVE UNFORTUNATE CONSEQUENCES

The results flowing from a determination that the equal-population principle of *Reynolds* does not apply to local governmental bodies would, in our view, be

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son v. *Genesee County*, 232 F. Supp. 567 (E.D. Mich.), where, while the challenge to the county board apportionment was in the nature of a collateral attack, and could have been disposed of on that ground, the court went ahead and stated that, in its view, *Reynolds* was inapplicable at the local level of government (*id.* at 569–572); *Detroit Edison Co.* v. *East China Township School District No. 3*, 247 F. Supp. 296 (E.D. Mich.), similarly involving a collateral attack on the composition of a body of local government, where the court did not reach the specific constitutional question, but implied that, in its view, *Reynolds* should not be applied to local governmental bodies (*id.* at 300–301). See also *Simon* v. *Lafayette Parish Police Jury*, 226 F. Supp. 301 (W.D. La.), where the court, prior to this Court's decision in *Reynolds*, apparently concluded that the challenged districting scheme was not constitutionally defective. In reversing and remanding for the convening of a three-judge court, *sub nom. Simon* v. *Landry*, 359 F. 2d 67, 68, the Fifth Circuit noted that "[o]n a further hearing the district court determined that the equal protection one man-one vote principle of Reynolds * * * does not extend to subordinate governmental instrumentalities such as the Police Juries of Louisiana Parishes [county governing authorities]."

undesirable and unfortunate. A serious and lasting constitutional anomaly would be created: a citizen's vote could be diluted at the local level but not at the State level. A citizen would have a constitutionally protected right to population-based representation in his State legislature, but not in the organs of government which stand closest to him—his county board or city council or school board. Malapportionment at the local level of government would be perpetuated indefinitely.[57] An opportunity to circumvent the full thrust of *Reynolds* would be given to State legislatures; they could delegate the exercise of significant

[57] Not unlike the malapportionment of many State legislatures (see *Reynolds*, 377 U.S. at 569–570), malapportionment of local governmental bodies goes far back into history in some instances. For example, in Hancock County, Mississippi, where the apportionment of the county governing board was challenged in the *Glass* and *Martinolich* cases, the last previous redistricting had occurred over 100 years earlier (see 156 So. 2d at 826), despite a State statute which required that counties be divided into five supervisors' districts "with due regard to equality of population * * *" (see 256 F. Supp. at 613, n. 1). And in the *Armentrout* case the court noted that the challenged districting for city council seats had "continued without change for more than 75 years" (409 S.W. 2d at 141).

Similarly, disparities from population-based representation at the local level are often greater than those existing, prior to *Reynolds* and its wake, in even the most malapportioned State legislatures. In one of the instant cases, for instance, a population-variance ratio of in excess of 100–to–1 existed between the most and the least populous districts electing members of the county governing board (R. 491; 126). And in the *Avery* case, No. 958, only five percent of the county's population resided in districts electing a majority of the members of the county governing board (see 406 S.W. 2d at 424). Other like examples of gross disparities from a population basis, too numerous to mention, are presented in many of the local government apportionment cases heretofore discussed.

powers to malapportioned local bodies (see Judge Fox's dissent in No. 430 (R. 430; 211–213), discussed in note 101, *infra*). The liberalizing promise of *Baker* v. *Carr* would not be permitted to reach full fruition. The ongoing reapportionment and redistricting at the local level taking place in many States would be cut short,[88] and a return to the patterns of the past might be expected even in those States in which the applicability of *Reynolds* at the local level of government is already, in many respects, a *fait accompli*. The sound and logical, and in some respects bold, decisions of various States and lower federal courts, which have not hesitated or deferred decision to await a definitive holding by this Court, would be undermined and rendered nugatory. State courts of last resort[89] which have progressively sought to apply the equal-population principle of *Reynolds* in a logical manner to local governmental bodies would, in a very literal sense, be left holding the bag.

An acceptance of the view that *Reynolds* logically applies at the local level leads to the conclusion, we submit, that districts established for the election of members of local governmental bodies must be judged by the same substantive standards as are laid down for State legislative districts in *Reynolds*, *i.e.*,

[88] For a discussion of such an ongoing development, involving ward redistricting in Philadelphia, see Note, *Legal Problems of Ward Realignment in Philadelphia*, 38 Temple L.Q. 174 (1965).

[89] See, *e.g.*, *State ex rel. Sonneborn* v. *Sylvester*, 132 N.W. 2d 249, 256 (Wis. Sup. Ct.); *Bailey* v. *Jones*, 139 N.W. 2d 385, 389 (S. Dak. Sup. Ct.); *Seaman* v. *Fedourich*, 209 N.E. 2d 778, 782 (N.Y. Ct. App.).

substantial equality of population. Some factual differences between the State and local bodies of course exist. On the local level virtually all bodies are unicameral in nature, while all but one of the 50 State legislatures is bicameral.[60] While the size of most local bodies is significantly smaller than most State legislative bodies, the constituencies on the local level would generally tend to be considerably smaller. A small numerical deviation from a population basis would thus tend to produce a larger percentage of disparity at the local than at the State level. And because the districts at the local level would tend to be considerably smaller than legislative districts in most States, both in terms of geography and population, more difficulty in following established political or natural or historical boundary lines might be presented in establishing equally populated, single-member districts at the local level. At all events, however, if the basic principle enunciated in *Reynolds*—that the weight of a person's vote cannot be made to depend on where he lives—applies to local governmental bodies, the same standard of equally populated districts would be a constitutional requisite. As under *Reynolds,* minor deviations to effectuate rational policy considerations would similarly be permissible.

Certainly there are a large number of these units of local government, and, in many respects, their nature, functions, powers and purposes differ (see the discussion, *supra,* pp. 16–21). As a logical starting point for constitutional analysis, however, we suggest

[60] This consideration, it would seem, would hardly run counter to the logic of applying *Reynolds* to local bodies, and might indeed tend to support such an application.

that the equal-population principle of *Reynolds* is applicable to all bodies of local government, representative in character, whose members are elected from districts (see *supra*, pp. 37–38). Subsequently, we discuss in more detail the particular bodies at issue in the instant cases (*infra*, pp. 72–101), in the context of a general consideration of the applicability of the basic constitutional principles to the various kinds of local governmental bodies. The conclusion as to the applicability of *Reynolds* could well rest solely on logic and consistent constitutional decision-making. In addition, however, we urge that sound considerations of policy (discussed *infra*, pp. 63–72) support the applicability of the equal-population principle, at least to all of the forms of local governmental bodies before the Court in the instant cases. Finally, despite the large number of these local bodies, we believe that the experience of recent years shows that the practical problem of judicial administration (see the discussion *infra*, pp. 107–118) is a wholly manageable one.

II. REASONS OF SOUND PUBLIC POLICY SUPPORT APPLICATION OF THE EQUAL-POPULATION PRINCIPLE TO LOCAL GOVERNMENTAL BODIES

A. LOCAL GOVERNMENTS PLAY VITAL ROLE

In *Reynolds* v. *Sims*, 377 U.S. at 564–565, this Court described the historical role of State legislatures in American political life:

> State legislatures are, historically, the fountainhead of representative government in this country. A number of them have their roots in colonial times, and substantially antedate the creation of our Nation and our Federal Government. In fact, the first formal stirrings

> of American political independence are to be found, in large part, in the views and actions of several of the colonial legislative bodies. With the birth of our National Government, and the adoption and ratification of the Federal Constitution, state legislatures retained a most important place in our Nation's governmental structure. * * *

Similarly, local governments have always been of critical importance in our democratic system. The town meeting in colonial New England is perhaps the earliest example of American government at the local level. In the early nineteenth century, De Tocqueville praised local self-government in the United States as follows:

> Local assemblies of citizens constitute the strength of free nations. Township meetings are to liberty what primary schools are to science; they bring it within the people's reach; they teach them how to use it and how to enjoy it. A nation may establish a system of free governments but without the spirit of municipal institutions, it cannot have the spirit of liberty.[61]

In similar vein, Lord Bryce, another leading analyst of American government, observed: "Democracy needs local self-government as its foundation." [62]

American local government is, of course, rarely based upon town meetings today. Instead, as we have seen, most local units are governed by a council or board or some other representative group, together with elected executives. Still, local government—government closest to the people—lies at the root of

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[61] De Tocqueville, Democracy in America, ch. 5, quoted in 1 McQuillin, Municipal Corporations, 330 (1949).

[62] Bryce, Modern Democracies, Vol. I, p. 320, quoted in 1 McQuillin, *supra*, at 331.

democratic institutions. The Kestenbaum Commission, appointed by the President in 1955, urged that it should be the basic premise of American government to "use the level of government closest to the community for all public functions it can handle," since "every citizen has the opportunity to participate actively and directly" only at "the lowest levels of government."[*] Citizens are able to participate more actively in local government because they are likely to have more familiarity with the issues and greater concern for the outcome. Local governments also offer the possibility of flexible solutions to specific local problems.

Viable government at all levels is the plainest requisite of our complex society. The growth of federal functions emphasizes, rather than lessens, our dependence on the effective exercise of governmental power at the State and local levels. Decentralized government is not a relic of the nineteenth century; it remains essential to the philosophy and practice of democracy. *Reynolds* and its implementation give promise of revitalization in our State capitols. Application of the equal-population principle will hopefully have a like effect in our city halls and county squares.

Local government is not merely important because it is closest to home; it also has great and growing practical effect on the daily lives of citizens. This is clear whether emphasis is placed on the increasing

[*] H.R. Doc. No. 198, 84th Cong., 1st Sess., 6, 47. Decentralized government not only maximizes citizen participation; when government operates effectively at the local level, public responsibility is accentuated, local officials are more responsive to community interests, and scrutiny of government action is enhanced.

number of subjects conferred to the jurisdiction of local units or on the rapidly rising amounts of money they collect, administer, and expend. For example, local governments—cities, counties, school districts, and the like—either alone or in conjunction with the States—have responsibility over law enforcement, the administration of justice, correctional institutions, public hospitals, welfare, public education, libraries, sanitation, fire protection, streets, local transportation, sewage, leasing and building codes, zoning, parks and recreation, and myriad other matters. These areas constitute the very marrow of community life—education for children, security for families, the physical make-up of the neighborhood, and necessary public services and utilities. At the same time, property taxes, still the principal source of funds for most local governments, are of great importance to homeowners, tenants, and businessmen. Decisions as to these local matters, which are so vital to daily living, may frequently be of greater immediate significance to citizens than determinations made in the State capital or in Washington.

Local governments are assuming increasingly greater importance, particularly in the 212 metropolitan areas where, as of 1960, 113 million Americans lived. In urban areas they tend to have greater freedom and authority because of home rule, and more and more people have been moving to these areas. At the same time, urbanization has greatly increased the pressures on local governments through rapidly accelerating demands for a wide variety of public services. Furthermore, the complexity of life

in densely populated urban areas has led to new and difficult problems, and to the development of new local governmental programs relating to slum clearance, urban renewal, public housing, welfare and poverty, public health, mass transportation, water and air pollution, juvenile delinquency, land-use planning, and the like. The federal government has been directing increasingly large amounts of funds to deal with these problems either through the States or directly to local governments. The ability to solve them, however, clearly depends on the vigor and effectiveness of government at the local level.

Another significant consideration involves annual expenditures. Government spending at the local level is substantial and is increasing rapidly.[64] In the fiscal year ending in 1964 city governments spent 18.9 billion dollars; county governments expended 8.9 billion dollars in 1962; and additional billions were spent by school and other special-purpose districts.[65] These figures have been rising at the rate of about eight percent a year, considerably faster than federal expenditures. In comparison, State governments had total expenditures of 42.6 billion dollars in fiscal 1964.[66]

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[64] During the ten-year period 1954–1964, total revenue for cities grew 97 percent, expenditures were up 96 percent, and total indebtedness was increased by 106 percent. For local governments other than cities, revenue increased 121 percent, expenditures 115 percent, and total indebtedness 129 percent. The Municipal Year Book 1966, 256.

[65] The Municipal Year Book 1966, 257; 1962 Census of Governments, Vol. IV, No. 2, "Finances of County Governments," 1.

[66] The Council of State Governments, The Book of the States, 1966–1967, 173.

While on the average expenditures by local governments are much smaller than those of State governments, this is not invariably so. New York City had expenditures of 3.2 billion dollars in the fiscal year ending June 1964. This is more than any State except California and New York. Another seven cities and one county had expenditures of over 200 million dollars, while seven States had expenditures below this amount." Eight other cities and counties had expenditures of over 100 million dollars per year. Consideration of these financial figures alone indicates that local governments can hardly be characterized as insignificant parts of the governmental structure.

B. MALAPPORTIONMENT HAS DAMAGING EFFECTS UPON THE FUNCTIONING OF LOCAL GOVERNMENTAL BODIES

In *Reynolds*, 377 U.S. at 567, the Court pointedly stated:

> The complexions of societies and civilizations change, often with amazing rapidity. A nation once primarily rural in character becomes predominantly urban. Representation schemes once fair and equitable become archaic and outdated. * * *

Malapportionment at the local level almost invariably results in local bodies which are substantially less responsive to the more populous areas of the cities, counties, or special districts. Yet, these are the very areas where the problems are apt to be most acute.

" The Municipal Year Book 1966, 262–263; The Council of State Governments, The Book of the States, 1966–1967, 178–179; 1962 Census of Governments, Vol. IV, No. 2, "Finances of County Governments", 68–193 (Table 11).

The burgeoning suburbs have more serious educational, law-enforcement, planning, and other problems than nearby rural areas. Even more acutely, the deprived centers of our large cities are plagued by poverty, dilapidated housing, inadequate education, crime, congested traffic, and other problems which they are finding it increasingly difficult to solve. In addition, these areas are often heavily populated by minority groups which are subject to both poverty and discrimination.

It seems clear that, if local governments are to cope meaningfully with the grave problems of modern urban America, all citizens must be fairly and fully represented in the local governing bodies. Local governments are constantly forced to difficult choices: whether more funds should be spent in deprived areas than others; whether public housing should be built and where it should be located; what sort of urban renewal programs should be pursued; what kinds of new educational programs should be developed; and, critically, how additional funds to support various programs can be raised. If decisions such as these are to be made in the democratic tradition, they must be made by governing bodies which are truly representative, are sensitive to the needs of the affected community, and are committed to an unrelenting search for solutions. The needs are far too pressing to engage in the wasteful luxury of stalemate and ineffectiveness in local government. Regardless of the assistance provided by the federal and State governments, there is no doubt that the intractable problems of our

urban areas cry out for effective and concerted governmental activity at the local level.

C. NEWLY ENFRANCHISED VOTERS HAVE A GREAT INTEREST IN FAIRLY APPORTIONED LOCAL BODIES

In *South Carolina* v. *Katzenbach*, 383 U.S. 301, 308, this Court observed that the Voting Rights Act of 1965 (42 U.S.C. 1973) "was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century." Yet, the salutary goal of that legislation will not be fully realized if discrimination against minority groups can be perpetuated, albeit indirectly, by the maintenance of malapportioned local bodies. There is only scattered evidence that existing malapportionment at the local level is racially motivated. But little foresight is needed to predict that, if malapportionment at the local level is sanctioned by this Court as constitutionally permissible, pressure to adopt such schemes will mount.

During the first year and a half following the passage of the Voting Rights Act, approximately 459,000 Negro citizens were registered as voters for the first time in the five States which comprise the deep South.[68] For the first time in their lives these citizens are electing, or will soon be electing, representatives to serve them at all levels of government, including the local level. This massive registration effort could largely be undermined if the vote secured on the one hand could be grossly undervalued on the other.

[68] Alabama, Georgia, Louisiana, Mississippi, and South Carolina. Figures were compiled by the Department of Justice and the Civil Rights Commission.

Moreover, the intent of Congress could well be effectively frustrated, at least in part, if a pattern of malapportionment at the local level should eventuate. Although, in appropriate circumstances, racially based gerrymandering is subject to constitutional challenge, if districts at the local level could be grossly disproportionate in population, little need for such gerrymandering would exist in order to accomplish the same objective. Compare *Gomillion* v. *Lightfoot*, 364 U.S. 339, with *Wright* v. *Rockefeller*, 376 U.S. 52.

Effective involvement in government at the local level may be far more meaningful for newly enfranchised voters than the right to vote for legislators in a population-based State legislature. The most urgent needs of these citizens and their most pressing interests will often relate to matters within the purview of local officials. County and city governments and, perhaps most importantly, school boards have competence and control over those specific, everyday matters and programs in regard to which progress toward equality in rights and opportunity can be most expeditiously and effectively advanced. Matters such as public housing, building codes, sanitation, public transportation, health services all touch the daily lives of these citizens most directly, and all are largely administered at the local governmental level.

Moreover, constituencies at the local level are relatively small, and the representative-voter relationship thus tends to be far more direct. While the voices of minority group representatives at the national and State level might be somewhat muted by those of the majority, local governing bodies, importantly depend-

ent on these voters for election and reelection, might be expected to be more responsive to minority groups and more concerned with their detailed, day-to-day problems. To rely only on properly apportioned State legislatures and the federal government to meet the needs and promote the welfare of these citizens is to engage in wishful thinking and invite years of delay, dissatisfaction and frustration. These new voters deserve the rights as well as the responsibilities of full citizenship at all levels of government. Malapportionment at the local level, if its perpetuation is long countenanced, will seriously inhibit, for "millions of non-white Americans," that participation "on an equal basis in the government under which they live" so proudly promised by the Voting Rights Act of 1965.[*]

III. THE EQUAL-POPULATION PRINCIPLE APPLIES TO EACH OF THE SEVERAL KINDS OF LOCAL GOVERNMENTAL BODIES HERE INVOLVED

We have discussed the general considerations of principle, logic and policy which support the applicability of *Reynolds* to local governmental bodies. We now turn, more specifically, to the particular kinds of governmental bodies involved in the instant cases, using them as prototypes in discussing the potential scope of the equal-population principle and whether any distinctions should be made, in regard to its applicability, among the various types of governmental bodies operating on the local level.

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[*] *South Carolina* v. *Katzenbach*, 383 U.S. 301, 337.

A. GOVERNING BOARDS OF COUNTIES AND MUNICIPALITIES WHICH ARE ELECTED FROM DISTRICTS ARE SUBJECT TO REYNOLDS' EQUAL-POPULATION REQUIREMENT

In *Reynolds*, this Court characterized State legislatures as "instruments of government elected directly by and directly representative of the people" (377 U.S. at 562) which are "responsible for enacting laws by which all citizens are to be governed" (*id.* at 565). This characterization is equally applicable to the governing bodies of counties and municipalities.[10] Indeed, these "little legislatures" do not differ in any relevant respect from State legislatures. They are ordinarily empowered to enact ordinances of general applicability and perform functions affecting all local residents. Moreover, these bodies are almost invariably governed by elected representatives who, it is contemplated, will be responsible and responsive to the voters. Thus, the same "personal" and "basic" right involved in voting for representatives in a State legislature (*id.* at 561) is exercised in electing members of a city council or county board.

That such local governmental bodies generally derive their legal existence from the State legislature and exercise delegated, rather than inherent, powers does not impair the analogy.[11] That fact is relevant only to the extent that it demonstrates the State's

[10] Although the discussion herein refers only to county and city governing boards, since these are the kinds of bodies involved in the instant cases, many of the same considerations apply to township boards as well, especially where such bodies exercise general governmental powers. See the discussion *supra*, pp. 16–19.

[11] See the discussion in note 43, *supra*.

involvement in, and responsibility for, malapportionment at the local level. Of course a State might determine that members of county boards and city councils will be appointed by the Governor or the State legislature. We do not contend that the States must establish any particular form of local government, or that citizens have a federal constitutional right to elect county supervisors or city councilmen. But such units are found in and throughout every State, and the States have almost uniformly determined that they will be governed by elected representatives. Having so decided, they may not confer the privilege of voting for these representatives in a manner which dilutes the weight or debases the effect of some citizens' votes because of where they happen to reside within the political subdivision.

It is no answer to say that State legislatures, properly apportioned under the mandate of *Reynolds*, will provide an adequate remedy for malapportionment at the local level, and that the courts, including this Court, should leave the matter wholly to the political process. Most courts, as we have seen, have disagreed with such an approach, except as a temporary matter. And, although the States have ultimate authority over the apportionment and districting of governmental units, the actual role played by the legislatures in drawing district lines varies considerably. The Alabama legislature designed the districts for the Houston County Board of Revenue and Control, the Virginia General Assembly adopted the districts approved in a popular referen um in Virginia Beach, and the Texas legislature played no part at all in determining the districts for the election of Midland

County commissioners.[72] Moreover, even assuming a new breed of legislators with a philosophical commitment to reapportionment, there is no reason to believe they will have any greater political stake in, or any more eagerness for, proper apportionment of local governmental bodies.[73] And even if the legislator representing a particular locale wishes to have the county board redistricted through the enactment of local legislation, the matter remains primarily one of limited concern and he may be unable to persuade a sufficient number of other legislators to effectuate his proposal. If the matter is ordinarily handled through general legislation having statewide effect, the legislator's problem would probably be further compounded and even more difficult. At all events, the important constitutional right involved should not be left to the

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[72] Involved in *Avery* v. *Midland County*, pending on petition for certiorari, No. 958, this Term (see 406 S.W. 2d 422).

[73] Indeed, it has been argued that reapportionment of the State legislatures, by giving greater political power to urban areas, may intensify resistance to local reform. See Note, Reapportionment, 79 Harv. L. Rev. 1228, 1273 (1966). On the other hand, at least several State legislatures, *viz.*, Wisconsin, Michigan and New York, and perhaps a few more, have taken action to correct malapportionment of local bodies, and bills to this end are presently pending in a few more States. See Wis. Sess. Laws, 1965, Ch. 20, § 7, amending Wis. Stat. Ann. § 59.03; Mich. Stat Ann. §§ 5.369(1)–(15); see also R. 491; 175–184, relating to a New York enactment vetoed by the Governor. Where the underrepresented voters are in a minority—a problem no less serious than the underrepresentation of a majority—legislative correction of local malapportionment seems less likely. And State legislators will often represent districts in which some citizens are overrepresented and some underrepresented in their local bodies, and will wish to avoid the matter if possible.

vagaries of the political process, at least not without a clear statement of the constitutional prerequisites and the prodding of a prompt judicial remedy. As this Court said in *Lucas* (377 U.S. at 736):

> Except as an interim remedial procedure justifying a court in staying its hand temporarily, we find no significance in the fact that a non-judicial, political remedy may be available for the effectuation of asserted rights to equal representation in a state legislature. * * *

As discussed earlier, the method of electing city councils and, occasionally, county boards is generally determined by a charter adopted by the electorate, and subject to amendment by the electorate. And, at least in some States, initiative and referendum procedures exist at the local as well as the State level. But the fact that the voters have themselves designed or acquiesced in the existing apportionment, and have a means available to effect a change, does not make judicial action inappropriate. Once again, *Lucas* settles that question (*ibid.*):

> Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act. As stated by this Court in *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U.S. 624, 638, "One's right to life, liberty, and property * * * and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be.

Counties and cities, while not the most numerous, are probably the most familiar kind of local govern-

ment. They are general-function units exercising important and substantial governmental powers which touch each citizen's ordinary and everyday affairs. There can be no serious doubt about the applicability of the equal-population principle of *Reynolds* to the governing boards of these basic units of government. Three of the instant cases are illustrative in this regard.

1. *No. 491.* In our view, this case presents the strongest possible situation for application of the equal-population principle. The Board of Supervisors of Suffolk County is the legislative and policy-determining body of the county. When this litigation was commenced, its members were elected from districts having a maximum population-variance ratio of 132 to 1. Noting that the action attacked "the provision of the Suffolk County Charter whereby the County Board of Supervisors, which has a local legislative authority, is to consist of the elected Supervisors of each of the county's ten towns," the court below stated (R. 491; 125–126):

> The basic theory of the action is disparity of representation. Concerning disparity, there can be no question. The ten towns of Suffolk were never of equal population; town lines were not drawn on a population basis and did not profess to be so drawn. In addition, over the years radical population changes as a result of economic and industrial developments have taken place in eastern Long Island. * * * The eastern area remains thinly populated; the western has become rather densely populated. Thus, for example, the town of Shelter Island finds itself about as it was 150 years ago

> with its population stabilized at some 1,300 persons, whereas the towns of Islip, Huntington and Babylon, to take extreme cases, have some 172,000, 126,000 and 142,000 persons, respectively.
>
> Each town has elected its chief executive officer (the supervisor) and no fault can be found with this practice. The trouble arises, so aver the plaintiffs, because the supervisors of the ten towns constitute the Board of Supervisors of the County which is the legislative body of the County. * * *

As further noted by the court below (R. 491; 136 n. 6): "The five least populous towns having approximately 10% of the county's population have five supervisors with voting strength equal to the five supervisors representing the remaining 90%."

The district court found that the apportionment scheme in Suffolk County resulted in invidious discrimination. After allowing ample time for political or legislative relief, the court ordered the Board to adopt and submit to the electorate a new plan of government with a properly apportioned governing board. That decision, in our view, was clearly correct, and, assuming that a three-judge court was properly convened, should be affirmed.[74]

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[74] That Suffolk County voters approved the charter containing the challenged apportionment plan is without constitutional significance, under *Lucas*, 377 U.S. at 731–732, 736–737. Nor is the long history of Suffolk County and its towns a justification for the existing plan, under *Reynolds*, 377 U.S. at 579–580. We express no view on the lower court's holding the Suffolk County apportionment invalid under the New York as well as the federal Constitution (see R. 491; 199). We discuss the possible jurisdictional problem in this case at pp. 126–128, *infra*.

Two somewhat ancillary issues involved in this case deserve mention. One arises from the fact that the supervisors are members of the Board by reason of their election as the chief executive officers of the towns within the county. This circumstance does not weaken the case, in our view, because Board membership is not only a very important responsibility in itself, but is undoubtedly more important than the functions performed as town executive. The right to an equally weighted vote in electing local governmental bodies cannot be subverted through the use of *ex-officio* representation or by combining the representative function with other duties of greater or lesser importance.

Another issue relates to the use of weighted voting as a remedial device in apportionment cases, the district court having ordered a weighted voting system adopted as an interim measure, pending a permanent legislative remedy (see R. 491; 199). Recognizing the difficulty in having a reapportionment plan drawn by a malapportioned board, yet reluctant to allow further delay, the court sought a plan which would provide a prompt, yet fair, remedy.[75] In this respect, despite having some reservations about weighted voting as a permanent solution, the court below followed the example of the New York State courts in other cases involving local governmental units.[76] But it

[75] Under the court's ordered plan, each member of the Board is given the number of votes equal to the quotient of the population of his town divided by 5,000, to the nearest whole number, but no supervisor would have less than one vote (R. 491; 199).

[76] Citing *Seaman* v. *Fedourich*, 262 N.Y.S. 2d 591 (Sup. Ct., Broome Co.), and *Shilbury* v. *Board of Supervisors*, 260 N.Y.S.

did not simply order a weighted voting plan into temporary effect; the court also directed the Board to develop a plan or plans for its consideration and for eventual submission to the county electorate. And later, when various plans had been submitted, the court expressly noted that one of the proffered plans "is defective in that it provides for straight weighted voting by the Supervisors of the Board as presently constituted" (J.S. 491; 15a). No specific plan was ordered into effect or even approved by the court. Rather, the court simply directed the board to submit to the electorate in November 1966 a charter amendment composed of various proposed, constitutionally valid plans for permanent apportionment of the county board (R. 491, 199).

In these circumstances, it does not appear that the question of the propriety of a weighted voting scheme as a permanent measure is properly raised here, and a discussion of that question does not seem warranted. On the other hand, the adoption of a weighted voting scheme as a "stopgap" measure, for use until a new permanent plan is devised, approved, and put into effect, seems plainly proper as an appropriate temporary remedial technique which a court in its discretion might utilize (see *Reynolds*, 377 U.S. at 585). When used in this fashion, weighted voting provides a reasonable alternative to either allowing the existing malapportionment to be perpetuated for a considerable period of time or taking the fashioning of a permanent apportionment plan out of the hands of the people and their elected representatives.

2d 931 (Sup. Ct., Sullivan Co.). See also *Graham* v. *Board of Supervisors*, 273 N.Y.S. 2d 419, 421 (Ct. App.), approving a weighted voting plan "solely as a temporary expedient."

2. *No. 624.* This is a rather straightforward case without a complicated election scheme. Five of the six members of the Board of Revenue and Control of Houston County, Alabama, are elected from districts by the electors in each of five prescribed districts. Sixty-one percent of the population and sixty-nine percent of the total assessed value of property are located in one district, and the maximum population-variance ratio is approximately 6 to 1.

Appellees assert that the Board possesses only minimal powers and is concerned primarily with the rural area of the county lying outside the most populous district. The first point is adequately refuted by a mere recitation of the Board's authority, which extends over highways, public health and welfare, sanitation, hospitals, waterworks, and all county property, and includes the power to tax, condemn property and issue revenue bonds." The second point is

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" Some of the opinions in the cases heretofore considered (*supra*, pp. 44–55) contain an enlightening discussion of the powers and functions of the respective county governing boards there involved. See, *e.g.*, *State ex rel. Sonneborn* v. *Sylvester*, 132 N.W. 2d 249, 256 (Wis. Sup. Ct.), noting that the State legislature "has granted a substantial bundle of legislative powers to county boards and may grant additional substantial powers," and that "the county today is a unit of government with vital powers over the lives of its residents"; *Bailey* v. *Jones*, 139 N.W. 2d 385, 388 (S. Dak. Sup. Ct.), stating that among the powers of county boards "are the authority to enact rural and airport zoning regulations; construct and repair bridges and highways; designate through or main highways and the speed thereon; establish and maintain public parks, county fairs, and free libraries; contribute to health centers; provide for assistance [sic] and deputies in county offices; generally supervise the fiscal affairs and levy taxes on all property in the county. * * * In effect they both manage and govern the counties"; *Hanlon* v. *Towey*, 142 N.W. 2d 741, 747 (Minn. Sup. Ct.), noting that "the county board's power with respect to taxation,

also without merit. As stated by this Court in *Reynolds*, "people, not land or trees or pastures, vote" (377 U.S. at 580). It is equally true that people, not land, use highways, libraries, and hospitals. People, not trees, require public welfare and sanitation facilities, and people, not pastures, pay taxes. The services performed by the Board are, under the legislation establishing its authority, intended for the benefit of all residents of the county. Certainly, taxes which support such services are paid by all county residents without regard to the district of residence. Yet, only five percent of the county's expenditures for the construction and maintenance of public roads was inside the city limits of Dothan (R. 624; 91, 119). Malapportionment of the county board cannot be justified on the ground that overlapping or

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the county budget, capital improvements, welfare, health, the administration of justice, zoning, and many other areas of public service is quite different in variety and scope than that possessed by an administrative or special-purpose unit of government"; *Martinolich* v. *Dean*, 256 F. Supp. 612, 615 (S.D. Miss.), stating that county boards have "been invested with vast authority and responsibility by the legislature. * * * They have legislative, executive and quasi-judicial powers, duties and responsibilities. They have full jurisdiction over roads, bridges and ferries. They equalize ad valorem assessments for taxes for the whole county and fix the tax levies for the county, for supervisors districts and for county schools. They may acquire lands by purchase or by eminent domain for county purposes and may sell county property. They authorize and approve expenditures of public funds for a long catalogue of governmental purposes. They issue bonds for the county * * *. They, in effect, are purchasing agents for the county and many of its offices and agencies. They have zoning responsibilities, promotional authority, and subsidizing powers for certain activities and undertakings. They can issue subpoenas and punish for contempt. * * * In short, they are, to a large extent, the government of their county."

additional services are provided by the city—paid for, of course, by the residents of Dothan."[78] There is, of course, no constitutional prohibition on a governmental unit being organized with sole responsibility and taxing authority outside the city limits of Dothan. But, so long as the Board exercises general authority over the whole county, and taxes accordingly, there is no justification for deviation from population-based districting.

A majority of the district court panel, alluding to the absence of any definitive decision of this Court, denied the relief sought on the grounds that (1) mere numerical imbalance in an apportionment scheme "falls short of proving invidious discrimination" and does not warrant judicial intervention (R. 624; 61); (2) Dothan residents "have a clearly available political remedy," and the question of redistricting may "safely be committed" to a properly apportioned State legislature (R. 624; 62); and (3) the Board is a nonsovereign political subdivision of limited powers and does not exercise clearly "legislative" functions to the extent necessary to invoke the equal-population principle (R. 624; 63).

Both of the latter points—the adequacy of the political remedy and the scope of the Board's powers—have been discussed previously (*supra*, pp. 74–77 and pp. 81–83).[79] The first point is refuted by this

[78] See, however, *Hanlon* v. *Towey*, 142 N.W. 2d 741, 747 (Minn. Sup. Ct.), and Note, 11 S. Dak. L. Rev. 386, 395 (1966).

[79] Contrary to the lower court's suggestion, the application of the equal-population principle cannot, in our view, be made to turn on whether the governing body's functions are labelled "legislative", "administrative", "executive" or some combination of such terms. Neither the right to cast an equally

Court's decision in the *Lucas* case, a companion to *Reynolds*. Indeed, there the Court found Colorado's legislative apportionment constitutionally deficient on a more slender record (377 U.S. at 734–735). In *Lucas*, unlike here, there had been no long-continued failure to reapportion—the apportionment invalidated had been adopted in November 1962. Nor was there, as here, an allegation of whimsical, or purposeful, discrimination; and in *Lucas* the Court rejected the argument that the availability of a political remedy (there, initiative and referendum) justified anything more than a temporary staying of relief (*id.* at 736–737). Thus, in our view, the court below erred in upholding the existing districting arrangement and, assuming that a three-judge court was properly convened, its decision should be reversed.[60] As Judge Johnson stated in dissent, the court below should at least have retained jurisdiction and stayed proceedings "to allow the State a reasonable time to adopt a valid scheme of reapportionment" (R. 624; 71).[61]

3. *No. 724.* Most of the issues raised in this case have been dealt with previously, although, unlike Nos. 491 and 624, which involve county boards, at issue

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weighted vote nor the importance of the particular local governmental body involved depends on such labels. Some of the offices involved in *Gray* v. *Sanders*, 372 U.S. 368, we note, were State "executive" offices. Limiting the equal-population principle to bodies exercising "legislative" authority has some superficial appeal, but disregards the right to cast an equally weighted vote for members of other kinds of bodies elected from districts. In this regard, see the concurring opinion in the *Strickland* case (256 F. Supp. at 836).

[60] We discuss the possible jurisdictional problem in this case at p. 128, *infra*.

[61] As to Judge Johnson's views on the applicability of *Reynolds*, see note 55, *supra*.

here is the districting scheme for the election of the city council of recently expanded Virginia Beach, Virginia.[82] The only novelty stems from the use of so-called "7–4 plan," under which each of seven members of the council must reside in and declare his candidacy from one of the seven boroughs in the city, while no residence requirements relate to the other four seats.[83] The maximum population-variance ratio among these boroughs is 39.8 to 1.

An argument is made that, since all eleven members are elected at large by all voters of the city, no member should be considered to be a representative of any particular area. However, the rationale for the 7–4 plan, and the use of disproportionately populated boroughs, was to insure representation for the rural interests in the less populous boroughs.

[82] Most city councils have essentially all of the substantive powers commonly possessed by county boards, and, indeed, significantly more authority in some instances, particularly where home-rule municipalities are concerned. Some of the cases discussed previously involved city councils instead of county governing boards, and no significant distinctions have been drawn between the two kinds of bodies insofar as the applicability of the equal-population principle is concerned. Indeed, while much of the litigation in New York has involved county boards (see note 48, *supra*), the basic court of appeals decision, *Seaman* v. *Fedourich*, 209 N.E. 2d 778, was in a case challenging the composition of a city council. Similarly, the Fourth Circuit's early and leading decision in the *Ellis* case (352 F. 2d 123) involved the Baltimore City Council.

[83] Although an argument is made that, by failing to appeal from an earlier order, appellants conceded the applicability of the equal-population principle, and that the only question here raised is whether the particular plan at issue comports with the constitutional requirement, we take no position on that question and assume *arguendo* that the threshold question of applicability is presented here as in the other three cases. In regard to the jurisdictional question presented by this case, see the discussion *infra*, pp. 125–126.

Indeed, there can be no other sensible explanation of the scheme.

We do not suggest that a scheme of at-large elections with district residence requirements is, *ipso facto*, unconstitutional.[84] Our submission is, rather, that when the prescribed residence districts are of disparate population, voters residing in the more populous districts suffer a qualitative impairment of their vote of the same stature and constitutional significance as the quantitative impairment suffered by voters in *Reynolds* and the companion cases. The freedom of choice of electors in the more populous districts is substantially curtailed vis-à-vis the choice of electors in the sparsely populated districts—their right to vote is simply not the same right as that accorded to those living in the less populous areas. Certainly no individual is entitled to have whomever he personally selects as the representative for his district; nevertheless, he is entitled to the same breadth of choice in casting his vote that is available to other electors voting in the same political unit. While the weight of all votes cast in electing councilmen is literally the same,[85] the character and effect of the votes vary

[84] See, *e.g.*, *Reed* v. *Mann*, 237 F. Supp. 22 (N.D. Ga.), holding that such a scheme, without more being shown, is not *per se* invalid.

[85] Of course, the choice of a majority of the voters in a particular residence district may be overriden by the voters generally. But the choice of the voter in a more populous district, as to certain of the seats to be filled, is limited to candidates required to reside in a less populous district. Despite the at-large feature, those residing in such a favored district are in effect accorded separate representation above and beyond that to which their number would entitle them. It is simply "ignor-

according as the elector resides in a heavily or sparsely populated residence district. Simply stated, under such a scheme voters are treated differently on the basis of where, within the city, they happen to reside. That, under *Reynolds*, is impermissible.

This Court's decision in *Fortson* v. *Dorsey*, 379 U.S. 433, does not command otherwise.[88] No question was raised or discussed there regarding disparity among the populations of the several residence districts. Indeed, as appears from Mr. Justice Douglas' dissent, the districts were quite close in population, the maximum population-variance ratio among the

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[ing] the practical realities of representation" to say that all councilmen represent all voters in the city, and that the at-large feature saves the scheme (*Fortson* v. *Dorsey*, 379 U.S. 433, 437–438).

[88] In *Fortson* the question before the Court was simply whether the creation of multi-member districts for the election of legislators was *per se* unconstitutional, as the lower court had held (228 F. Supp. 259). Noting that in *Reynolds* the Court had "rejected the notion that equal protection necessarily requires the formation of single-member districts" (379 U.S. at 436), the Court concluded that county-wide voting in several multi-district counties did not deny residents of those counties a vote equally weighted with that of residents in single-member constituencies (*id.* at 437). Continuing, the Court carefully narrowed its holding (*id.* at 439): "* * * [O]ur opinion is not to be understood to say that in all instances or under all circumstances such a system as Georgia has will comport with the dictates of the Equal Protection Clause. It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster. This question, however, is not presented by the record before us. * * *"

Fulton County districts being 1.1 to 1."[87] Moreover, in *Burns* v. *Richardson*, 384 U.S. 73, this Court indicated that inquiry into the manner in which residence requirements were established and the way in which residence districts were drawn was necessary before such a scheme could be approved. The Court there stated that an invidious effect may be shown "if, in contrast to the facts in *Fortson*, * * * districts are not appropriately subdistricted to assure distribution of legislators that are resident over the entire

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[87] 379 U.S. 433, 441. See the opinion by Circuit Judge Haynsworth in which such equality was thought to be crucial in *Fortson*. *O'Shields* v. *McNair*, 254 F. Supp. 708, 714 (D. S.C.). See also *Montgomery County Council* v. *Garrott*, 222 A. 2d 164, where the Maryland Court of Appeals held that a scheme involving an at-large election of all members of a county governing board, where five of the seven members were required to reside in districts grossly unequal in population, was unconstitutional. There one of the residence districts contained 54 percent of the county's population, while two of the others contained only three and four percent, respectively. While placing considerable reliance on the Fourth Circuit's decision in the instant case, the Maryland court stated (222 A. 2d at 166): "That a requirement of residence by a legislative representative in a district malapportioned as to population is unconstitutional, even though election be by all the voters of the political subdivision of which the district is a part, was foreshadowed by *Fortson* v. *Dorsey*, 379 U.S. 433 * * *." *Fortson* was decided, in the view of the Maryland court, "on the premise that the [residence] districts were equal in population" (222 A. 2d at 166). With that view of *Fortson* we completely agree. See also *Gray* v. *Board of Supervisors*, 222 A. 2d 176, 178 (Md. Ct. App.), and the opinion of the lower court in No. 491, rejecting the so-called Albertson plan under which each of the Suffolk County towns would be represented by one supervisor, but all supervisors would be elected by county-wide balloting, stating that this scheme "would appear not to rectify but to perpetuate the malapportionment that now exists" (R. 491; 193). Compare, however, that court's later statement that such a scheme was "probably, if marginally, constitutional" (J.S. 491; 16a).

district * * *" (384 U.S. at 88). If the geographical distribution is critical, and may be appropriately inquired into, then surely *Fortson* does not foreclose a holding that the 7–4 plan is invidiously discriminatory in regard to those residing in the more populous residence districts.[28]

The district court in the instant case was clearly troubled by the disparities in population but found that the plan was justifiable as an interim measure for the period of "transition".[29] The plan was defended before that court on the ground that it allowed for growth and changes in population (R. 724; 97, 103–104). Yet, the court of appeals found that growth in the immediate future would almost certainly occur

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[28] That the problem here at issue is not so narrow a one as it might initially appear to be is indicated by figures (see note 24, *supra*) showing that a large number of county boards are elected under schemes providing for at-large elections but with residence district requirements. A number of members of city councils and other local governmental bodies are similarly elected (see note 26, *supra*). And *Martinolich* v. *Dean*, 256 F. Supp. 612, 616 (S.D. Miss.), shows that a pattern of shifting to at-large elections while retaining the previously existing districts simply as residence districts, though unequal in population, might develop. In that case the court specifically noted that it was not passing on the validity of such an arrangement.

[29] The illustration given in footnote 2 to Judge Hoffman's opinion (R. 724; 111), despite its superficial plausibility, clearly fails to justify the plan. If the candidate from Pungo is the most qualified and popular candidate under this scheme it may fairly be assumed that he will be under a proper one. On the other hand, his large vote may be due to extraneous factors (note that nine other candidates ran unopposed). Moreover, that a candidate who lost in his home district won at large may merely indicate that he was the lesser of two evils. It does not imply that he would have beaten a different potential candidate drawn from anywhere in the unit or from a residence district equal in population to all other such districts.

in those districts which are already more heavily populated (R. 724; 118). In fact, estimated population figures for 1964 show that the urban areas grew by a greater percentage (R. 724; 109), and that the maximum population-variance ratio increased from 39.8 to 1 in 1960 to an estimated 43.8 to 1 in 1964 (R. 724; 80). The difficulties stemming from the consolidation and transition of Virginia Beach's governmental structure can be adequately met in ways which do not impair the right to vote. For example, special taxing districts were formed as part of the city charter to pay for indebtedness incurred and benefits conferred by the component governments before consolidation. Maintaining of compact constituencies was also cited as a rationalization for the 7–4 plan as drawn, but if this factor does not justify disparities in the districts from which State legislators are chosen,[90] then it seems inconceivable that it could justify the disparities here.

[90] See the dissenting opinion of Mr. Justice Stewart in *Lucas*, 377 U.S. at 756–757. See also the opinion of the Fourth Circuit in the instant case, which noted (R. 724; 121–122): "Moreover, confessedly, the Virginia Beach plan was purposed, and drafted with an eye, to include in the makeup of the council the representation of the peculiar interests of each borough. It was architectured to give voice to the agricultural or non-urban concerns of the smaller boroughs. However understandable, reasons of this kind may not be counted in appraising the Constitutionality of an apportionment," citing *Reynolds*, 377 U.S. at 562. See also *Davis* v. *Mann*, 377 U.S. 678, 692.

Most of the State legislative cases were viewed as involving underrepresentation of urban and suburban areas and overrepresentation of rural areas. A similar situation is presented in all of the instant cases, even No. 724, although a city council is involved. However, such an urban/rural dichotomy will not be presented in at least a number of local government apportionment controversies, such as, for example, most of those relating to city councils, since the area involved (unlike Virginia Beach) will generally be completely urban in character.

The court of appeals found that the 7–4 plan violated the Equal Protection Clause and ordered the district court to retain jurisdiction pending legislative action. In rejecting the argument that, despite the disparate populations of the various residence districts, the at-large aspect of the plan saved it from constitutional attack, the Fourth Circuit noted that full compliance with the Fourteenth Amendment was wanting because, under the 7–4 plan, "the imbalance in representation in the council is obvious" (R. 724; 119). That court pointed out that the smallest borough, or residence district, was accorded the "same assured representation" as the largest borough in the city. In distinguishing *Fortson* the Fourth Circuit stated that in that case the Court "explicitly noted the absence of any substantial inequality among the [residence] districts" (R. 724; 121). Concluding that "it is not readily conceivable that the Court would have given its endorsement" to a scheme involving such "a vast disparity" between the populations of residence districts as is here presented, the Fourth Circuit observed (R. 724; 121):

> Altogether unrealistic is the assumption that the member from the smaller populated political subdivision would give, or could humanly be expected to give, the far greater populated subdivisions representation equal to that he accords his residence constituency. Nor would his naturally dominating provincial interest be neutralized by his dependence upon the electorate of the entire city for his office. His subsequent defeat, because of a show of parochialism, would not remove the inequality in repre-

> sentation, for the choice of a successor would still be limited to the same district. The smaller area of population would thus continue to have representation equivalent to the much larger districts. This curtailment upon the selectivity of potential candidates is further proof of the vulnerability of the plan. * * *

If a State were to provide for the election of State legislators at large, but establish residence districts unequal in population, it is impossible to conceive of this Court's upholding such a scheme under *Reynolds, Lucas, Fortson,* and related cases. No difference in result should occur because such a system is established at the local rather than the State level. *Reynolds'* equal-population principle may not be so readily subverted. In our view, the decision of the court of appeals was correct and should be affirmed.

B. SCHOOL BOARDS WHICH ARE ELECTED FROM DISTRICTS ARE LIKEWISE GOVERNED BY THE EQUAL-POPULATION PRINCIPLE OF REYNOLDS

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, * * * [and] is the very foundation of good citizenship.[21] * * *

Those words are no less true today than they were in May 1954. Education unquestionably plays a

[21] *Brown v. Board of Education,* 347 U.S. 483, 493.

critical role in our lives and remains a matter of foremost concern of government and the citizenry. To be sure, education is rarely a purely local responsibility. Yet no one will gainsay that local units commonly exercise considerable autonomy and a vital discretion in this area.

Nor is the public interest and controversy with respect to education by any means limited to the problem of racial segregation.[29] Education is the concern of all citizens, whether or not they have children of school age, and it may well arouse more general interest than any other governmental function. School boards are by far the most numerous and common of the various types of local governmental bodies, and their pervasive effect in the community is directly felt by all.

In addition to performing a critical function, school boards often operate rather independently of State or local control, and exercise substantial powers which not only affect school children, through their authority over facilities, personnel, books and curricula, but also affect all citizens, through the power to tax and to take property under eminent domain, and the authority to fix budgets and to administer federal assistance programs. The overwhelming majority of school boards are elected, which indicates a wide preference for direct participation by the citizen in the

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[29] There is no blinking the fact, however, that malapportioned school boards which do not include minority group representation at least roughly equivalent to population could be expected to have more difficulty in dealing with racial problems in the educational system, and would probably be less attuned to minority group needs in regard to education.

shaping of educational policies. Moreover, because school boards are generally single-function governmental units, a desire that issues regarding education be isolated from other issues of governmental concern and that specific viewpoints on education be expressed in the elective process seems plainly indicated. In these circumstances, the right to vote for school board members must be vigorously protected against undervaluation. It is of no less, and indeed may be of more, importance than the right to vote for other sorts of representatives. Indeed, such has been the ruling of the other lower federal courts which have definitively passed on the question of the applicability of the equal-population principle to school boards. *Delozier* v. *Tyrone Area School Board*, 247 F. Supp. 30 (W.D. Pa.); *Strickland* v. *Burns*, 256 F. Supp. 824 (M.D. Tenn.) (see the discussion *supra*, pp. 51–52, 54–55).[23]

No. 430. The Kent County School Board has authority to appoint a county superintendent, prepare a budget and levy taxes, recommend library books, conduct special programs and transfer areas between school districts (see R. 430; 143–148). Plainly the Board exercises influential control over educational policies and practices in Kent County, Michigan.[24]

[23] Another case involving a challenge to a school board districting scheme was decided without reaching the question of the applicability of the equal-population principle. *Detroit Edison Co.* v. *East China Township School District No. 3*, 247 F. Supp. 296 (E.D. Mich.). Cf. *Pitts* v. *Kunsman*, 251 F. Supp. 962, 964–966 (E.D. Pa.); *Elberti* v. *Kunsman*, 254 F. Supp. 870 (E.D. Pa.).

[24] County school boards in Michigan are not treated as independent governments by the Bureau of the Census. 1962 Census

Yet, a majority of the three-judge panel concluded that the equal-population principle was inapposite.[*]

Most of the considerations involved in determining the applicability of the equal-population principle of *Reynolds* at the local level have already been discussed. Those considerations are, in our view, equally applicable to elected school boards. The problem remaining in the instant case arises from the two-step

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of Governments, 304. Apparently, the reason is that they do not have final approval over the maximum amount of their budgets (see Mich. Stat. Ann. § 15.3298(1)(c) and 1962 Census of Governments, 15–16). However, the budget is approved by an elected assembly organized just like other local governments, and that assembly elects the Board. Since the attack here is not solely against the composition of the Board, but against the whole election scheme, including the assembly, our position in this case is not inconsistent with our adoption of the definitions and terminology of the Bureau of the Census (see *supra*, pp. 14–15).

[*] In denying relief the court below did not rely on the fact that the case involves a school board, but rather indicated a reluctance to apply the *Reynolds* doctrine to local governments in general. Not only did the majority state that "[t]he facts and issues in connection with this case are very ably set forth in the opinion of Judge Fox" (R. 430; 220), but they also indicated broadly that they "do not agree that the decisions to which reference is * * * made require the District Courts of the United States to review the manner of apportionment and constitution of each and every board and agency of the several states * * *" (R. 430; 221). Inquiry into whether the particular election scheme involved in this case is one as to which the equal-population principle applies, even if applicable as a general matter to local governmental bodies, including school boards, is of course not foreclosed by the lower court's view that that broad question was raised. But the majority's position does indicate that they perceived the broad question to be presented, and did not decide the case on the somewhat narrower ground.

election system which is used in selecting the County School Board, and is unrelated to the fact that the unit involved is a school board."[96]

Members of the Board are not elected from districts. Consequently, there can be no attack on the apportionment of the Board itself. Rather, the constitutional objection, properly considered, is focused specifically on the apportionment of the assembly which elects the Board. That assembly is composed of one representative from each of the 39 boards of education for the various local school districts within the county. Each has one vote, irrespective of the number of people represented, in electing the five Board members. The maximum population-variance ratio among these school districts is about 2038 to 1.

Unfortunately, there was little helpful discussion in the opinions of the lower court directed to the problems raised by this scheme.[97] It would appear that

[96] No view is here expressed on the question as to standing asserted by some of the parties. We assume *arguendo* that at least some of those on each side of the litigation are proper parties. In addition, we do not discuss any questions relating to the annexation and detachment of certain areas, as between various school districts, nor whether the particular transfer of territory, which initially gave rise to this litigation, should be upheld on the ground that the approval of the Board, though malapportioned, was the action of a *de facto body*. It would appear that such questions lack federal constitutional significance and, we note, the question as presented in the Jurisdictional Statement filed in this case relates only to the applicability of the Equal Protection Clause to the election system here involved.

[97] Judge Fox, in dissenting, characterized the scheme as "essentially a unit system of voting—each school district within the county receives one vote in the election of each of the five members of the county board" (R. 430; 200). In his view, the system was one "paralleling the 'county-unit' system in-

the argument against the applicability of *Reynolds* is one grounded principally on the asserted absence of a State-conferred right to vote for County School Board members. Another formulation might be that the Board is not intended to be responsive to, or representative of, the general citizenry, but rather to have such a relationship only as to the constituent boards of education, and that school districts are not "persons" having rights protected by the Fourteenth Amendment.[98] But such an argument ignores the critical fact that it is school children, not school dis-

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validated by the Supreme Court in Gray v. Sanders, 372 U.S. 368 * * *" (R. 430; 201), and he found "a gross disparity, amounting to invidious discrimination, between the representation afforded the Grand Rapids School District * * * and the representation of other constituent school districts on the Board" (R. 430; 204). Finding that the Michigan legislature had in fact conferred a right to vote for a representative county school board, despite the two-step election system, he concluded that the arrangement was constitutionally defective. In our view, *Gray* is of considerable relevance, but does not completely carry the day here. There the county-unit system was simply a device for assigning different weight to the votes cast in various counties, and did not involve the election of "units" which would then select among various candidates. However, *Gray* undoubtedly would have been decided the same way had the votes been cast for "electors" who would then select among candidates according to the expressed wishes of a majority of those voting for them. Here the "electors" themselves serve a function other than simply making selections according to the expressed wishes of those voting for them, since each school district's representative in electing the county board members is himself elected initially as a member of that school district board, and not just to elect county board members, as the hypothetical "elector" in the *Gray* situation would have done. In short, *Gray*, in our view, is analogous but not necessarily controlling.

[98] See, *e.g.*, *Williams* v. *Mayor and City Council of Baltimore*, 289 U.S. 36.

tricts, who read library books and require special educational programs. It is taxpayers, not boards of education, who supply the revenue for the Board." They *are* "persons" protected against unconstitutional State action by the Fourteenth Amendment.

It is not contended that the residents of Kent County have an "absolute" or constitutional right to elect the County School Board. Nor is it suggested there can never be a two-step election scheme, wherein the voters elect an assembly which in turn selects the members of the governing body, to which the equal-population principle is inapplicable. But once it is determined that the body is to be a representative one, and that its membership is to be determined, directly or indirectly, through an election system, the system devised must be one which treats each member of the electorate equally.[100] No person's vote may be

[99] In the *Strickland* case the plaintiffs consisted of parents of children attending or having a right to attend public schools operated by the county school board (see 256 F. Supp. at 828). While perhaps a wise cautionary measure to avert an attack on standing, it would seem that all residents and taxpayers entitled to vote for members of an allegedly malapportioned school board would have sufficient standing to maintain such an action.

[100] As stated by the Court in *Gray* v. *Sanders*, 372 U.S. 368, 379: "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, and wherever their home may be in that geographical unit." Here the geographical unit which County School Board members represent is the entire county, yet those residing in the Grand Rapids School District, for instance, have only 1/39 of the voting influence in selecting such members, although comprising over 55 percent of the county's total population. *Fortson* v. *Morris*, 385 U.S. 231,

undervalued, even though it passes through an intermediary. To decide otherwise would be to allow the intricacies of a sophisticated system to work an infringement not allowed under simple and straightforward schemes.[101] But the "Constitution forbids 'sophisticated as well as simple-minded modes of discrimination'" (*Reynolds*, 377 U.S. at 563, quoting from *Lane* v. *Wilson*, 307 U.S. 268, 275).[102]

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the Georgia gubernatorial election case, does not require a different result than that which we suggest here. The factual situation there was unique, and in *Fortson* the Court clearly intimated that, had the Georgia legislature been grossly malapportioned, as the electing assembly in the instant case is, it would have reached a contrary conclusion (see 385 U.S. at 235).

[101] Dissenting Judge Fox's concern that allowing the election system to stand would in effect permit the legislature "to completely nullify the result of Reynolds * * *" is not unwarranted (R. 430; 211). Indeed, if such a scheme meets constitutional muster, "a limitless circumvention" of *Reynolds* not only at the local level, through delegating functions to local bodies selected by similar means, but also at the State level might be possible. If, in the wake of and to avoid the effect of *Reynolds*, a State determined that its legislators would be selected through a two-step process, whereby the voters in each county, for example, would elect an "elector" who would then, along with the other "electors" so determined, choose the members of the legislature, it seems plain that such an attempted circumvention would not be permissible, under *Gray* and *Reynolds*. If such a scheme would not be allowed at the State level, no convincing reason exists for sanctioning it at the local level.

[102] In this regard, see also *WMCA, Inc.* v. *Lomenzo*, 377 U.S. 633, 653, a companion to *Reynolds*, where the Court stated: "However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant undervaluation of the weight of the votes of certain of a State's citizens merely because of where they happen to reside."

Here the court below denied relief in part because this Court had not yet applied the equal-population principle to local government bodies (see note 54, *supra*).[103] The time is now ripe for that application. Despite the difficulties incident to the two-step election process, no distinction should be drawn, we submit, between Michigan county school boards and other school boards—or between school boards and local bodies generally. Thus, in our view, the judgment below was erroneous and should be reversed.[104]

We stress that, should the Court entertain doubts as to the proper disposition of this case because of the peculiar characteristics of the two-step election system, such doubts would have no relevance to the basic

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[103] In our view, dissenting Judge Fox, and impliedly the judges in the majority, properly rejected an argument grounded on the availability of a political remedy to achieve popular election of school board members. The existence of such a remedy is, under this Court's decision in *Lucas*, of very limited constitutional significance (377 U.S. at 736–737) (see the discussion *supra*, pp. 74–76). And such a remedy was not in any event practically available under the instant circumstances, since, as pointed out by Judge Fox (R. 430; 215): "The procedure outlined in M.S.A. 15.3294 (2) and (3) is constitutionally unacceptable, requiring as it does that a majority of constituent school districts, representing more than 50% of the children on the last school census in the county district, must adopt resolutions in favor of such a procedure. The problem with this plan is that the Grand Rapids School District, with 48.04% of the school-age children in the * * * [county], and 55.6% of the total population, would need the votes of nineteen other school districts (there being a total of 39 in Kent County) to bring about a popular election. Thus again, patently, a small minority has effective power to frustrate the will of the great majority."

[104] No possible jurisdictional problem appears to exist in this case. See the discussion *infra*, p. 126.

question of whether *Reynolds* is generally to be applied to the election of school boards, most of which, across the country, are elected directly by the people. That question is a pressing and important one, and we urge that that much at least be laid to rest.

C. GOVERNING BOARDS OF SPECIAL DISTRICTS WHICH ARE ELECTED FROM DISTRICTS SHOULD ALSO BE COVERED BY THE EQUAL-POPULATION PRINCIPLE

While the issue of malapportioned special districts[105] is not raised in any of these cases, a brief discussion of this matter might be helpful in considering the general problem of fair districting and proper apportionment at the local government level. The question is relevant if one wishes to explore the ultimate scope and logical consequences of a holding that the equal-population principle of *Reynolds* applies at the local level.

Special districts are the fastest growing category of local government today, having increased by 27 percent between 1957 and 1962.[106] This growth is the result of many factors and the reasons for the creation of any particular district may be difficult to determine.[107] Often, the primary reason is that the ordinary units of local government lack the authority to undertake a particular function or are unable to finance a certain activity because of limitations on tax

[105] By "special districts" we mean all those special-function units of local government other than school boards, as discussed *supra*, pp. 20–21.

[106] From 14,424 to 18,323. See 1962 Census of Governments, 1.

[107] See U.S. Advisory Commission on Intergovernmental Relations, The Problem of Special Districts in American Government, ch. VII.

rates, indebtedness, or the ability to issue bonds. However, some special districts are formed because of citizen dissatisfaction with the performance of established governmental units or as a result of an unwillingness of such governments to undertake or expand a particular function. Perhaps the somewhat indiscriminate growth of special districts will be curbed by revitalized, properly apportioned, general-function units and by appropriate action by reapportioned State legislatures. In any event, special districts are a common feature of our governmental system, and some, though not many, of the governing boards of the bodies are elected from districts (see *supra*, p. 21).

The arguments made earlier in support of applying the equal-population principle of *Reynolds* to "little legislatures" and school boards logically pertain to special districts as well. Recognizing that special districts exercise delegated authority, are often created at the initiative of the voters, lack general "legislative" duties, and share overlapping jurisdiction with other units, none of these considerations, we submit, justifies malapportionment with respect to the election of their governing bodies. A substantial number of special districts have authority to levy property taxes and issue bonds, and there appears to be a close correlation between taxing power and an elected governing board (see note 30, *supra*). Some special districts perform important and substantial governmental functions having a direct effect on the everyday lives of the residents of the community involved; others plainly do not. Some deal with matters of

general interest to most or all citizens, while others handle matters of particular interest to certain segments of the population which are of little concern to the people generally. Such variations apart, however, it would seem, at least *prima facie*, that where State or local law directs a system of election from districts for choosing the members of the governing board of a special district, the equal-population principle requires that the districts be substantially equal in population. To hold otherwise would depart from the basic teaching of *Reynolds*—that voters cannot be treated differently simply on the basis of where they happen to reside within the geographical unit to be represented.

A few writers have suggested that at least some special districts need not be covered,[108] and it is not in-

[108] See Weinstein, *Effects of Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government*, 65 Colum. L.Rev. 21 (1965); Note, 44 Neb. L.Rev. 850 (1966). Weinstein's suggested distinction between general-function and special-function units, insofar as the applicability of *Reynolds* is concerned, while having some practical appeal (and apparently appealing to some of the lower courts, which have suggested that only bodies exercising "legislative" powers are within the constitutional ambit), does not, in our view, withstand close analysis. Where the right to elect members of bodies from districts is conferred, it is not entirely reasonable to require voters to be treated equally in some situations, but not in others, depending on the nature, powers and functions of the particular body. A blanket rule that no special-function units are constitutionally required to be apportioned on a population basis would be little more than an open invitation for States to circumvent the requirement as to general-function units by conferring more powers on the former bodies and by creating new special-function units rather than delegating additional powers to general-function units. In addition, the

conceivable that a doctrine could be worked out which would stop short of an all-encompassing rule. For example, only those districts exercising "substantial" powers or "significantly" affecting the residents might be required to apportion on a population basis; in other words, some sort of *de minimis* approach might be adopted. However, the task of selecting and consistently applying criteria of that order would undoubtedly present grave difficulties. A clear and sharp line between applicability and inapplicability would be far more easily administered.

Another approach might be to look at the number of different activities engaged in, or functions performed by, the particular special district. But this would not seem to be a viable criterion either, since a single-function district may have a greater impact on individuals than a district with several fields of interest. Nor would it seem profitable to select certain, more critical fields of interest and require only those districts involved in such activities to be fairly apportioned. Every function is potentially critical and a potential source of controversy.[109] Moreover, situations may exist in which a multiple-function dis-

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suggested dichotomy would exclude school boards from the equal-population requirement. School boards are a substantially different sort of body from the many variegated kinds of other special-function units. For the reasons discussed *supra*, pp. 92–94, it would be most undesirable, in our view, for school boards not to be within the equal-population principle.

[109] See *Evans* v. *Newton*, 382 U.S. 296 (involving a public park), and *Brown* v. *Louisiana*, 383 U.S. 131 (relating to a public library).

trict will combine one or more critical functions, in greater or lesser proportion, with several non-critical functions. Again, it does not solve the problem to engage in the labelling of bodies as "legislative" or "administrative" (see note 79, *supra*). Finally, if some, or all, special districts were not required to be apportioned on a population basis, there would be problems in distinguishing between "special districts" with many functions and powers and "general governments" with only a few. And should a general government which must be properly apportioned begin to spin off or delegate functions to special districts, which are not required to be apportioned on a population basis, determining at what point that government is no longer required, or the special districts begin to be required, to be apportioned on a population basis would be a virtual impossibility.

These are but a few of the complexities which might be encountered. Actually, such line-drawing questions are more appropriate for a legislative rather than a judicial body. Under a rule that all governmental bodies whose members are elected from districts are covered by the equal-population requirement of *Reynolds*, a State can still draw such lines among various local governmental bodies simply by determining which are to be elected from districts and which elected at large or not elected at all. The argument for a consistent and thoroughgoing application of the constitutional principle at stake is not an unrealistic one, and the practicalities support that

approach rather than one characterized by tenuous and artificial distinctions.[110]

[110] Passing mention should be made of several related problems which are not before the Court presently but which involve the applicability of the equal-population principle to various kinds of governmental bodies apart from those here discussed. One such problem relates to elected judges. In *Stokes* v. *Fortson*, 234 F. Supp. 575 (N.D. Ga), the court held that a system under which superior court judges were nominated from various judicial circuits but elected on a statewide basis did not violate the Equal Protection Clause. First the court stated that it could discern no "discrimination among voters or unequal weighting of votes of the sort condemned by the one man-one vote principle" (234 F. Supp. at 577), noting that no contention was made that the judges must be nominated "from circuits apportioned equally according to population" (*ibid.*, n. 1). The court concluded that "the fact that the statewide electorate may override the choice of the circuit in no way offends the principles of Baker v. Carr and its progeny" (*ibid.*). Continuing, the court stated (*ibid.*): "[E]ven assuming some disparity in voting power, the one-man-one-vote doctrine, applicable as it is now to selection of legislative and executive officials, does not extend to the judiciary. Manifestly, judges and prosecutors are not representatives in the same sense as are legislators or the executive. Their function is to administer the law, not to espouse the cause of a particular constituency. Moreover there is no way to harmonize selection of these officials on a pure population standard with the diversity in type and number of cases which will arise in various localities, or with the varying abilities of judges and prosecutors to dispatch the business of the courts. An effort to apply a population standard to the judiciary would, in the end, fall of its own weight." See also *Romiti* v. *Kerner*, 256 F. Supp. 35 (N.D. Ill.), which involved a challenge to the apportionment of Illinois Supreme Court judicial districts. Without passing on the applicability of *Reynolds* to the election of judges, the court upheld a constitutional amendment designed to correct the admitted malapportionment of judicial districts but which deferred implementation to allow the present judges to complete their terms and succeed themselves. In the course of its opinion, the court stated (256 F. Supp. at 46): "We have little doubt that, in a proper case, there is a valid distinction between ap-

IV. APPLICATION OF THE EQUAL-POPULATION PRINCIPLE TO LOCAL GOVERNMENTAL BODIES IS JUDICIALLY MANAGEABLE

We do not blink the fact that a holding in the instant cases that *Reynolds* applies generally at the local

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plying the 'one man, one vote' rule in a legislative reapportionment case [and] to the election of a state supreme court judiciary * * *. Under the facts of this case, as they now exist, we do not reach or decide that interesting question." Compare *Davis* v. *Curry*, 21 C.D. L.A. 39 (W.D. Mo.). Application of the equal-population principle to judges elected from districts within the area of their court's jurisdiction presents a question different from that involved in the instant cases. Judges are not generally regarded as serving in a representative capacity, and valid considerations apart from population may underlie apportionment of judicial officers. At all events, there is no need to resolve this question at this time.

Several other cases have related to the applicability of this Court's apportionment decisions to the election of persons to political party offices. In *Lynch* v. *Torquato*, 343 F. 2d 370, the Third Circuit upheld the dismissal by the lower court (228 F. Supp. 262 (W.D. Pa.)) of a suit challenging the election of a Democratic Party county chairman by precinct committeemen and seeking to require the election of the chairman by popular vote of all registered Democratic voters, on the ground that several precincts contained widely disparate numbers of registered Democrats. Holding that *Reynolds* and *Gray* were inapplicable to "the internal management of a political party" (343 F. 2d at 372), the Third Circuit affirmed. *Lynch* involves a somewhat unique and potentially difficult problem, but on its facts appears, in our view, to have been correctly decided. Later decisions relating to local governmental bodies have consistently and properly distinguished *Lynch*. Applicability of the equal-population principle to political party elections may well depend on the function performed by the body being elected, as noted by the Third Circuit (*id.* at 372–373); there all candidates for public office were nominated in primaries and not at party conventions. In this regard, see also *Davis* v. *Sullivan County Democratic Committee*, 21 C.D.L.A. 55 (N.Y. Sup. Ct., Sullivan Co.), relying on *Lynch* and reaching a similar conclusion. No such issue is of course raised in the instant cases.

level of government will potentially affect thousands of local governmental bodies. This has led some to argue (as was also argued in *Baker* v. *Carr* and *Reynolds* v. *Sims*) that the problem is beyond the bounds of judicial manageability, and that only chaos and confusion in government will result from judicial intervention.[111] The problems are formidable to be sure—in large part because of past failures to confront them—but we believe that the apprehensions are overstated.

Viewed from hindsight, most of the anxieties and forebodings prompted by this Court's decisions in *Baker* and *Reynolds* have not in fact materialized. Predictions that federal courts would be continuously harassed by apportionment litigation, repeatedly faced with making difficult political determinations and persistently engaged in the tedious task of redesigning districts, have not been borne out by subsequent developments. Progress toward population-based representation has been made in virtually every State, without disrupting the functioning of State government and often with minimal involvement by the federal

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[111] Such an argument necessarily assumes that considerations relating to manageability, such as an increased judicial workload, the inconvenience accompanying adjustment of apportionment arrangements, etc., are relevant factors even though the rights asserted are constitutionally based and individual in nature. Certainly federally protected rights cannot be adjudicated—either upheld or rationalized away—on the basis of how much judicial burden and adjustment and inconvenience a particular decision is likely to have. In deciding *Brown* v. *Board of Education*, 347 U.S. 483, the Court was well aware that its holding would require change in a large number of then-segregated school systems in various States (see *id.* at 495), but did not rule differently on that account.

judiciary.[112] In the almost three years since *Reynolds* was decided, this Court has had before it for decision after plenary consideration only four State legislative apportionment cases.[113] While the number of local bodies is far greater, that experience nevertheless augurs well for the successful application, in a workable and satisfactory way, of the equal-population principle at the local governmental as well as the State legislative level. A full accommodation will take somewhat longer, but much of the groundwork has already been prepared.

That there are as many as 90,000 local governmental bodies[114] in this country emphasizes the significant impact which these units have on the daily lives of all citizens. The size of the figure also points up the potential scope of the malapportionment problem and demonstrates the need for a clear statement by this

[112] See 55 National Civic Rev. 394–400 (July 1966), for a State-by-State summary. There is good reason to believe that the responsive chord struck by *Baker* and *Reynolds* will be found to exist in regard to local government apportionment as well. Indeed, the degree of acceptance at the local level is indicated by the small number of such cases in which review in this Court has been sought, despite the volume of litigation in the State and lower federal courts.

[113] *Fortson* v. *Dorsey*, 379 U.S. 433; *Fortson* v. *Toombs*, 379 U.S. 621; *Burns* v. *Richardson*, 384 U.S. 73; *Swann* v. *Adams*, No. 136, 1966 Term, decided January 9, 1967.

[114] This represents a substantial decrease in local units over the last ten years. See 1962 Census of Governments, 1:

Type of unit	1962	1957	1952
Counties	3,043	3,050	3,052
Municipalities	17,997	17,215	16,807
Townships	17,144	17,198	17,202
School districts	34,678	50,454	67,355
Special districts	18,323	14,434	12,340
Totals	91,185	102,341	116,756

Court as the applicability of *Reynolds*. But it by no means implies that local malapportionment is judicially unmanageable. Since the equal-population principle comes into play, in our view, only where there is an election scheme involving the use of districts, the number of local governmental bodies possibly affected is immediately reduced substantially. Thus, while 2,516 of the 3,049 county governing boards (about 82.5 percent) are elected pursuant to schemes involving at least some use of districts, the estimated percentages for other types of governing bodies are much lower. Extrapolation from available figures (using 1962 data) and sample surveys indicates that about 40 percent of the 17,997 municipali[illegible]s, less than 20 percent of the 34,678 school districts, less than 20 percent of the 18,323 special districts, and a comparably small percentage of the 17,144 townships have governing boards which are elected, in whole or in part, by districts (see note 25, *supra*). These calculations indicate that, as a composite figure, roughly 25 percent of all governing boards of local governmental units are potentially subject to a requirement of population-based apportionment and districting. And at least some of the bodies potentially affected are presently apportioned on a population basis; as to them, no litigation to compel adjustment would be necessary.

Unlike most of the litigation involving apportionment at the State level, much of the litigation involving apportionment of local bodies would undoubtedly be brought in State rather than in federal courts. That has been the experience to date. The development seems a desirable one, not only because it eases the burden upon the federal judiciary, but because the greater familiarity of State courts with local

governmental systems will in general facilitate application of the equal-population principle to the various kinds of local bodies found in the several States. State courts have traditionally dealt with local government apportionment matters,[115] and can be expected to have little hesitancy on this score, once the constitutional principle has been clearly articulated by this Court. On several occasions this Court has specifically encouraged State courts to involve themselves in the adjustment of legislative representation.[116] This has borne fruit in the local government field (see the discussion *supra*, pp. 41–49); no less than seven State courts of last resort have already held the equal-population principle of *Reynolds* applicable at the local level.

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[115] See, *e.g.*, *State ex rel. South St. Paul* v. *Hetherington*, 61 N.W. 2d 737, 741 (Minn. Sup. Ct.); *State ex rel. Scott* v. *Masterson*, 183 N.E. 2d 376 (Ohio Sup. Ct.); *Griffin* v. *Board of Supervisors*, 384 P. 2d 421, (Calif. Sup. Ct.), involving local government apportionment controversies decided before *Reynolds* and under State, rather than federal constitutional, law. Compare *Opinion of the Justices*, 209 A. 2d 471 (N.H. Sup. Ct.).

[116] In *Maryland Committee for Fair Representation* v. *Tawes*, 377 U.S. 656, a companion of *Reynolds*, the Court stated (377 U.S. at 674): "We applaud the willingness of state courts to assume jurisdiction and render decision in cases involving challenges to state legislative apportionment schemes." And in both *Scranton* v. *Drew*, 379 U.S. 40, and *Forty-Fourth General Assembly of Colorado* v. *Lucas*, 379 U.S. 698, the Court vacated the judgments of the lower federal courts and remanded the cases for further consideration in light of supervening State Supreme Court decisions relating to legislative apportionment. Finally, in *Scott* v. *Germano*, 381 U.S. 407, in a *per curiam* opinion, the Court stated (381 U.S. at 409): "The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged."

Reapportionment at the local level is well under way or already accomplished, as to many local bodies, in a significant number of States. In States where the local governmental body in question is apportioned pursuant to a general State statute, one decision holding that statute unconstitutional will often be sufficient to stimulate a general and statewide adjustment, without the need for a specific challenge to the composition of each and every local body of that kind.[117] And, even where such a situation does not exist, several decisions establishing the basic guidelines for local reapportionment would probably induce compliance on the part of units not expressly bound by the judgments rendered. In addition, once the applicability of the equal-population principle is definitely established by this Court, it seems reasonable to assume that appropriate action by the State legislatures might be expected in many States to insure effective compliance on a statewide basis.[118] In short, there is no reason to assume that litigation attacking the existing apportionment and districting arrangements for countless governmental bodies will prove necessary in order to implement a decision holding *Reynolds* applicable at the local level.

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[117] See, *e.g.*, *State ex rel. Sonneborn* v. *Sylvester*, 132 N.W. 2d 249, where the Wisconsin Supreme Court's decision held invalid a single State statute prescribing the formula for county governing board apportionment in all but two of Wisconsin's counties; *Hanlon* v. *Towey*, 142 N.W. 2d 741, where the Minnesota Supeme Court struck down a single State statute relating to districting for county governing boards in all but several Minnesota counties. See also *Mauk* v. *Hoffman* 209 A. 2d 150 (N.J. Super. Ct., Ch. Div.).

[118] See note 73, *supra*, in regard to State legislative activity in this direction; see generally, however, the discussion *supra*, pp. 74–76.

Nor can it reasonably be concluded that the requirement to reapportion or redistrict will bring local governments to a standstill or render them ineffective. Judicial relief will not, in all likelihood, be required as to the large bulk of presently malapportioned arrangements. And, as shown in the State legislative apportionment litigation, the judiciary can generally provide for relatively smooth transition with no significant impairment of the normal operations of government, by recognizing the *de facto* legality of acts performed by a malapportioned body and by staying injunctive relief and avoiding direct involvement in the redrawing of district lines while the parties and the officials concerned pursue a political remedy. In many instances, the necessary reapportionment or redistricting can be accomplished by the local body itself; in others, it will require only *pro forma* approval by the State legislature. In those States where local apportionment is accomplished by the State legislature, the use of committees or commissions or study groups to draft and propose comprehensive remedial legislation would minimize the burden on the legislature and the disruption of governmental operations. Since apportionment at the local level is very rarely dealt with in State constitutions, in contrast to legislative apportionment, there would be no need to engage in the time-consuming and sometimes cumbersome processes of constitutional amendment.

Nor will the federal judiciary be overly taxed. In the first place, State courts can be expected to handle a lion's share of whatever litigation may eventuate. State courts which were reluctant to exercise jurisdiction in legislative apportionment controversies, or denied their authority to do so, will be far less re-

luctant to deal with local apportionment questions. To be sure, some suits will continue to be brought in the federal courts. But in many of these cases the convening of a three-judge district court will not be necessary—in contrast to the situation in cases challenging State legislative apportionment schemes. As we shall have occasion to elaborate (*infra*, pp. 118–125), 28 U.S.C. 2281, the basic provision relating to three-judge courts, has been consistently construed as requiring a three-judge court only when a suit to enjoin the enforcement of a State statute of general and statewide application is brought. Such a situation of course invariably existed in the State legislative apportionment cases, but not so here. Typically, suits relating to apportionment at the local level involve a challenge only to a local charter or ordinance or to a State statute limited in its application to a particular political subdivision. Indeed, a number of district courts have refused to convene a three-judge court in cases involving local apportionment during the past several years on this very ground.[119]

Assuming, therefore, that three federal judges will not ordinarily be required to sit as a district court to hear and decide, as an initial matter, local government apportionment cases, the burden on the federal judiciary will be considerably less than might first be imagined. By the same token, since no direct ap-

[119] See, *e.g.*, *Ellis* v. *Mayor and City Council of Baltimore*, 234 F. Supp. 945, 946 (D. Md.), affirmed, 352 F. 2d 123, 124 n. 1 (C.A. 4); *Delozier* v. *Tyrone Area School Board*, 247 F. Supp. 30, 31 (W.D. Pa.); *Strickland* v. *Burns*, 256 F. Supp. 824, 825 n. 1 (M.D. Tenn.); *Johnson* v. *Genesee County*, 232 F. Supp. 563, 564–566 (E.D. Mich.); *McMillan* v. *Wagner*, 239 F. Supp. 32, 33–34 (S.D. N.Y.). See also Circuit Judge Bryan's opinion in support of the dissolution of the three-judge

peal will lie from a single judge's decision, no undue burden should be placed on this Court. Rather, appeal will appropriately be taken to a court of appeals, and such intermediate appellate review will probably reduce considerably the number of appeals to this Court.[120]

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court initially convened in No. 724, one of the instant cases (R. 724; 74–78). Compare, however, *Simon* v. *Lafayette Parish Police Jury*, 226 F. Supp. 301 (W.D. La.), reversed and remanded for convening of a three-judge court *sub. nom. Simon* v. *Landry*, 359 F. 2d 67 (C.A. 5), certiorari denied, 385 U.S. 838. Once the pertinent principles are established, many such cases could probably be decided on the basis of stipulated facts without need for a hearing. And where three judges are required, the decision by that court would presumably have effect statewide, thus reducing the overall amount of litigation.

[120] See, *e.g.*, *Ellis* v. *Mayor and City Council of Baltimore*, 352 F. 2d 123 (C.A. 4); *Lynch* v. *Torquato*, 343 F. 2d 370 (C.A. 3), in neither of which cases further review was sought in this Court. In one of the instant cases, No. 724, the appeal is taken from a decision of the Fourth Circuit reversing the judgment of the single-judge district court.

In several situations where it has been deemed inappropriate to convene a three-judge court, a non-statutory district court of three judges has sat or two additional judges have participated at the trial in an advisory capacity. *Ellis* v. *Mayor and City Council of Baltimore*, 234 F. Supp. 945, 946 (D. Md.); *Strickland* v. *Burns*, 256 F. Supp. 824, 825 n. 1 (M.D. Tenn.). In both cases the two additional judges were invited by the single judge to sit with him because of the importance of and great local interest in the particular cases. Such a flexible procedure appears to provide a single district judge with a sensible and practicable way to obtain the assistance and advice of other judges in cases involving novel, difficult and substantial questions which are nevertheless inappropriate for a three-judge statutory court under this Court's consistently narrow reading of Section 2281. Appeal from a decision of such a non-statutory court would lie to the court of appeals, of course, and not to this Court, since 28 U.S.C. 1253 confers jurisdiction on this Court only in cases "required" to be heard by three judges.

What is more, once the controlling constitutional principles are definitively established, a three-judge court may be unnecessary even in those situations where, considering only the nature of the statute challenged, a statutory court might otherwise be thought to be required. Under the rule established in *Bailey* v. *Patterson*, 369 U.S. 31, Section 2281 becomes inapplicable once the constitutional question is "settled beyond question" and "is foreclosed as a litigable issue" (369 U.S. at 33).[121]

Finally, we stress that this Court need not here concern itself in any detail with the question of remedial techniques appropriate for use in local government apportionment cases. The same considerations of flexibility and equitable discretion, sanctioned by *Reynolds* and applied in subsequent cases dealing with State legislative apportionment, pertain with equal force in these cases.[122] Indeed, remedial prob-

[121] See, *e.g.*, *Lodico* v. *Board of Supervisors*, 256 F. Supp. 440, 441 (S.D. N.Y.), where the court determined, in reliance on *Bailey*, that "as a matter of practical judicial administration" a three-judge court was not required. See also *Glisson* v. *Mayor and Councilmen of Town of Savannah Beach*, 346 F. 2d 135, 136 (C.A. 5). We do not mean to intimate that, once the question of the applicability of the equal-population principle to local governmental bodies is definitely settled by this Court, in no such cases would the convening of a three-judge court be proper. Individual cases may occasionally still require the resolution of substantial and unsettled issues, and thus not fall within the ambit of the *Bailey* rule. Nor do we mean to suggest that the jurisdiction of a three-judge court, if properly invoked as an initial matter, can be somehow lost through an intervening clarification or resolution of constitutional issues. But where the unconstitutionality of a challenged apportionment is clear, under *Bailey* three judges would be unnecessary, although a general State statute is involved.

[122] As with State legislative cases, proper remedial techniques in local government controversies "will probably often

lems at the local level present fewer difficulties. Not only is there a body of law already developed in the lower courts; some of the remedial techniques which have been utilized in certain cases as interim measures, such as at-large elections, seem better suited at the local than at the State level.[123]

In both situations, of course, the fashioning of permanent apportionment arrangements should be left, wherever possible, to the State and local legislative bodies and to the people. To the extent necessary, however, judicially cognizable standards are plainly available in the approaches and concepts which have been evolved, and are still evolving, in the State legislative cases, and are readily transferable to local government litigation. Similarly, as to substantive standards, the courts may readily adapt and apply precepts relating to the proper measure of population,[124] the maximum permissible variations from perfect equality among districts and considerations jus-

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differ with the circumstances of the challenged apportionment and a variety of local conditions" (377 U.S. at 585).

[123] A similar remedial device—weighted voting—was used by the lower court as a temporary measure in one of the instant cases, No. 491 (see the discussion *supra*, pp. 79–80). For the reasons there stated, we do not regard the validity of weighted voting as a permanent arrangement as properly before the Court, although the voters subsequently adopted a similar plan (combining an increase in seats with weighted voting), which, however, is not yet in effect. We note, however, that Nassau County, New York, a neighbor of Suffolk County, has had a weighted voting plan in effect for a number of years.

[124] See generally *Burns* v. *Richardson*, 384 U.S. 73, 90–97. Since the Bureau of Census no longer breaks down population figures to the extent of stating the populations of subdivisions (such as wards) or of local political units separately, it may sometimes be necessary to utilize registered voter rather than total populations figures in effecting local government reap-

tifying miminal departures from population-based representation,[124] and the frequency with which reapportionment and redistricting is required.[125]

V. JURISDICTIONAL DEFECTS MAY EXIST IN TWO OF THE FOUR INSTANT CASES

All four of the instant cases come here from lower federal courts. Each of the three cases (Nos. 430, 491, and 624) in which probable jurisdiction was

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portionment and redistricting. *Burns* indicates that the use of registered voter figures is permissible so long as no discriminatory purpose or effect is shown (see 384 U.S. at 95–97). Compare the view of the Fourth Circuit in the *Ellis* case, 352 F. 2d 123, 126–130. See generally Weinstein, *supra* note 108, at 24; Note, 34 U. Cinc. L. Rev. 397 (1965).

[124] However, the fact that local governmental bodies are almost always unicameral suggests that perhaps smaller minimal variations should be allowed, since the underrepresentation of one area in one house cannot be offset by overrepresentation in the other, as with State legislatures (see *Reynolds*, 377 U.S. at 577).

[125] Under *Reynolds*, the frequency of State legislative apportionment was purposely geared to the decennial census taken by the federal government, since it generally provided the only reliable statewide figures (see 377 U.S. at 583–584). As a general matter, such an approach seems sufficient and expedient at the local level as well. Since local governmental bodies often have significantly smaller constituencies than State legislatures, periodic shifts and significant growth in population may have a far more dramatic effect, and result in a serious imbalance in representation, at the local level. If reliable figures are available for a particular local governmental unit, between censuses, it would not seem wholly out of the question to require the correction of gross disparities more often than once every ten years (see *Burns*, 384 U.S. at 96). On the other hand, considerations of stability and continuity in governmental organization (see *Reynolds*, 377 U.S. at 583) weigh heavily in favor of requiring adjustment no more frequently than every ten years, except perhaps upon a clear showing in an extreme case.

noted by this Court on December 5, 1966, is here on direct appeal from the decision of a three-judge district court convened pursuant to 28 U.S.C. 2281. In the fourth case (No. 724) a single judge rendered judgment and appeal was initially taken to the Fourth Circuit, which reversed, and the appeal to this Court was from that decision. An order of January 9, 1967, set No. 724 for argument along with the other three cases, postponing a determination as to jurisdiction to the hearing on the merits and directing the parties to that case to brief and argue the question of whether a three-judge court should have been convened. In light of this order, we address ourselves to the propriety of convening a three-judge court in all the cases, viewing the Court's earlier action in noting probable jurisdiction in Nos. 430, 491 and 624 as not foreclosing consideration of the jurisdictional question in those cases. As indicated in our memorandum filed in *Avery* v. *Midland County*, pending on petition for certiorari, No. 958, this Term, we have doubts as to whether a three-judge court was properly convened in two of the cases here on direct appeal (Nos. 491 and 624).

We have already stated our view that a large majority of suits brought in the federal courts challenging malapportionment of local governmental bodies can and should be tried before a single-judge, rather than a three-judge, district court, with appellate review initially lying in the courts of appeals (*supra*, pp. 113–115). Such an approach would have the salutary effect of lightening the burden of judicial administration placed on the federal courts in connection with this sort of litigation. Nor is it a mere

rule of convenience. Our view is wholly consistent with and follows from the long-standing interpretation of 28 U.S.C. 2281, which is read as not requiring the convening of a three-judge court to try an action seeking to enjoin a State statute of limited, as distinguished from general, application.

The objective of Section 2281, as recently expressed in *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 154, is "to prevent a single federal judge from being able to paralyze *totally* the operation of an *entire* regulatory scheme * * * by issuance of a *broad* injunctive order" (emphasis added). "The crux of the business," the Court had said earlier, in *Phillips* v. *United States*, 312 U.S. 246, 251, "is procedural protection against an improvident *state-wide doom* by a federal court of a state's legislative policy" (emphasis added).[127] Accordingly, it has been held unnecessary to convene a court of three judges to entertain suits to enjoin the enforcement of an Arizona statute authorizing municipalities, by further legislative action, to assess costs of street improvements against abutting property, *Ex parte Collins*, 277 U.S. 565; a New York statute imposing taxes assessed by and for the sole use of New York City, *Ex parte Public National Bank*, 278 U.S. 101; and a Florida statute applying only to the Everglades Drainage District, *Rorick* v. *Board of Commissioners*, 307 U.S. 208.[128] In the latter case,

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[127] See, also, *Bailey* v. *Patterson*, 369 U.S. 31, 33, stating that "[t]he three-judge requirement is a technical one to be narrowly construed * * *."

[128] In *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218, 228, the Court held that a three-judge court was not required to enjoin various officials of Prince

this Court observed (307 U.S. at 212): " 'Despite the generality of the language' of that Section, it is now settled doctrine that only a suit involving 'a statute of general application' and not one affecting a 'particular municipality or district' can invoke [the predecessor of Section 2281]."

It follows, *a fortiori,* that the requirement for a three-judge court is inapplicable to suits challenging the constitutionality of municipal charters and ordinances and orders of local governing boards.[139] Moreover, Section 2281 does not come into operation merely because State officials are sought to be restrained, if "the sphere of their functions" is a matter only of local concern (*Rorick* v. *Board of Commissioners,* 307 U.S. at 212). By the same token, the premise for a three-judge court is not satisfied "by joining, as nominal parties defendant, state officers whose action is not the effective means of the enforcement or execution of the challenged statute." *Wilentz* v. *Sovereign Camp,* 306 U.S. 573, 579. In similar circumstances, a number of lower federal courts have

Edward County from closing its public schools, paying county tuition grants and processing applications for State tuition grants. The Court reasoned that the plaintiffs were not attacking an action which the State commanded of the county, but something the county did "with state acquiescence and cooperation," although noting that the single judge's decision "may have repercussions over the State," and stated: "Even though actions of the State are involved, the case, as it comes to us, concerns not a state-wide system but rather a situation unique to Prince Edward County." See generally Currie, *The Three-Judge Court in Constitutional Litigation,* 32 U. Chi. L. Rev. 1 (1964).

[139] See *Uihlein* v. *City of St. Paul,* 32 F. 2d 748 (C.A. 8), certiorari denied, 281 U.S. 726; *Davis* v. *City of Little Rock,* 136 F. Supp. 725 (E.D. Ark); *Teeval Co.* v. *City of New York,* 88 F. Supp. 652 (S.D.N.Y.)

concluded, in cases challenging malapportionment at the local level, that three-judge courts should not be convened. See, *e.g.*, *Ellis* v. *Mayor and City Council of Baltimore*, 234 F. Supp. 945, 946 (D. Md.), affirmed, 352 F. 2d 123, 124 n. 1 (C.A. 4); *Delozier* v. *Tyrone Area School Board*, 247 F. Supp. 30, 31 (W.D. Pa.); *Strickland* v. *Burns*, 256 F. Supp. 824, 825 n. 1 (M.D. Tenn.); *Johnson* v. *Genesee County*, 232 F. Supp. 563, 564–566 (E.D. Mich.); *McMillan* v. *Wagner*, 239 F. Supp. 32, 33–34 (S.D.N.Y.).

In light of the narrow construction given the language of Section 2281 in these and like cases, it is clear that few apportionment cases involving local governmental bodies require the convening of three-judge courts. Most county governing boards for example, are self-apportioned. Often the State statutes merely determine the number of members of the county board and the manner of election, leaving the task of drawing districts, and apportioning the members among the districts, to the local body itself.[120] In this situation, the claim that the apportionment violates the Equal Protection Clause would not draw into question the constitutionality of the statute, but only the constitutionality of the local body's actions pursuant to the statute.[121] In other instances, when the

[120] See *Borges* v. *Loftis*, 87 F. 2d 734, 735 (C.A. 9), where the court stated: "The fact that the county ordinance was adopted in conformity with a state plan applicable to a large number of counties in the state does not convert the ordinance passed by the county board of supervisors into a statute of the state."

[121] According to this analysis, a three-judge court probably was improperly convened in *Martinolich* v. *Dean*, 256 F. Supp. 612 (S.D., Miss.), and improperly ordered convened in *Simon*

county government operates under a charter granted by the State or adopted by the county electorate, State statutes will have merely authorized the county to draw the charter and, usually, incorporated the charter into the State laws after it has been adopted. The apportionment of members among districts will be accomplished by the charter itself or by the governing board acting pursuant to the charter. In either case, the claim would not be that the statutes are unconstitutional, but that the charter, or the board's actions pursuant to the charter, are unconstitutional. That the charter is incorporated into the State's statutes does not lead to a contrary conclusion, for the "statute" is still one of limited application, and concerns only the county involved.

In some States apportionment and districting for county board seats is determined by the State legislature by a special statute applying only to the particular county. While the powers and duties of the board may be set out in a general statute applicable to all counties, and incorporated into the statute organizing the specific county board, no challenge would be directed at the constitutionality of these statutory provisions. Rather, the attack would properly be made only on those provisions dealing with apportionment and districting. Since such statutes would clearly be of limited application to a single county, a three-judge court would not be required.

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v. *Landry*, 359 F. 2d 67 (C.A. 5), certiorari denied, 385 U.S. 838. No significance in this regard should, in our view, be attached to this Court's denial of certiorari, earlier this Term, in *Simon*.

City council seats are normally apportioned by, or pursuant to, a charter adopted by the people or granted by the State. Here again, the constitutional attack is on the charter or council action, not the legislation granting or authorizing the adoption of the charter.[123] In the unusual instance in which a city charter is incorporated into the State statutes, such a statute is nevertheless clearly one of limited application and no three-judge court would be necessary.[123]

Occasionally, a situation exists in which the apportionment of a local governmental body is determined by a State statute applying to all or a substantial number of units of a particular class of government throughout the State.[124] Here, even though local officials are sought to be restrained and even though it is only one particular unit whose reappor-

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[122] See *Ellis* v. *Mayor and City Council of Baltimore*, 234 F. Supp. 945, 946 (D. Md.), and *McMillan* v. *Wagner*, 239 F. Supp. 32, 33 (S.D. N.Y.), where the convening of a three-judge court was, in our view, properly refused.

[123] And, in each of the situations discussed above, the same result would follow whether or not the complaint joined as defendants the Governor, the Secretary of State, the Attorney General, the State Board of Election Commissioners, or any other State official, under *Wilentz* v. *Sovereign Camp*, 306 U.S. 573 (see *supra*, p. 121).

[124] In some instances, categories of local governments may be classified by population, or on some other basis, so that a statute may not apply to every county or city or school district. Nevertheless, if the statute challenged applies to all local governments within such a class, it should be considered to be one of general application, and, in our view, a three-judge court would be properly convened.

tionment is sought,[125] the constitutional attack is aimed at a statute which applies generally throughout the State and to all such units in the State. Thus, in such a situation, the convening of a three-judge court would be proper.

It remains only to determine how these general jurisdictional concepts apply to the particular situations here involved. Such a determination is necessary, of course, because this Court has jurisdiction on direct appeal from a judgment of a three-judge court, under 28 U.S.C. 1253, only where the action was one "required * * * to be heard and determined by a district court of three judges." Thus, if the statutory courts were improperly convened in Nos. 430, 491, and 624, appeals to the respective courts of appeals, and not this Court, should have been taken. And, in No. 724, if a three-judge court should have been convened, the single judge who decided the case lacked jurisdiction and appeal to this Court from the Fourth Circuit's decision reviewing the merits is jurisdictionally defective.

In No. 724, a single district judge properly heard and decided the case, in our view, since the challenge was directed at a city charter provision prescribing the so-called 7–4 plan. Although the city charter was enacted into State law, it is clear that that statute was one of limited application, relating only to one

[125] See *Rorick* v. *Board of Commissioners*, 307 U.S. 208, 212, where the Court stated: "An official though localized by his geographic activities and the mode of his selection may, when he enforces a statute which embodies a policy of statewide concern, be performing a state function" within the meaning of Section 2281.

Virginia municipality. As Circuit Judge Bryan observed in dissolving the three-judge court initially convened: "[T]he controversy is of a local nature, without statewide significance, and so not within the intendment of 28 U.S.C. 2281" (R. 724; 75). Thus, we submit, this Court's question as to whether a three-judge court should have been convened in No. 724 should be answered in the negative. A single district judge properly heard and decided the case, appeal to the Fourth Circuit from that decision was proper, and this Court's jurisdiction to review the judgment of the court of appeals is properly invoked under Section 1254(2).

Nor do we perceive any jurisdictional difficulties in No. 430. There a three-judge court was convened, and the case is before this Court on direct appeal. But there the statute challenged was one relating generally to all Michigan county school boards of a certain type. It was thus a State statute of general and statewide application and a three-judge court was properly convened under Section 2281.

Conversely, the propriety of convening three-judge courts in Nos. 491 and 624 is, in our view, questionable. In No. 491 the constitutional attack was directed toward Sections 201 and 203 of the Suffolk County Charter, which in substance provide that the county governing board shall be composed of the supervisors of the several towns of the county and that each supervisor shall have one vote. While the county charter was enacted into State law, that enactment could hardly be regarded as constituting a State statute of general application, since the charter

provisions plainly relate, and could relate, only to one New York county. That the three-judge court which sat in No. 491 was aware of the jurisdictional considerations under Section 2281 is obvious from a reading of that court's basic opinion (R. 491; 124, 128, 130-131, 133-134). Somewhat inexplicably, however, no resolution of the jurisdictional question was ever articulated by the court, which simply continued to sit as a statutory court. None of the court's orders enjoined the operation of a State statute, and the basic order simply adjudged "[t]hat Section 203 of the Suffolk County Charter is invalid as applied * * *" (R. 491; 199).[136] It would appear, therefore, that a three-judge court was improperly convened and

[136] An argument to the contrary—that the enjoining of a State statute of general application was sought so that the three-judge court was properly convened—can be made in No. 491. Here the complaint attacked not only the pertinent provisions of the Suffolk County Charter but also several general provisions of the New York County Law, Sections 150 and 153, which were, however, specifically inapplicable to counties like Suffolk which had chosen an alternative form of county government. Presumably the argument would be that, if the court held the charter provisions relating to the composition of the Board of Supervisors invalid, a "gap" in the pertinent law would be created and these general statutory provisions would then become effective, as to Suffolk County, if not also struck down by the court. Perhaps this is theoretically sound, but the court did not find it necessary even to discuss these statutory provisions and plainly did not hold them invalid or order their enforcement enjoined. Rather, the court specifically noted that the charter could be amended by local action (R. 491; 133), and supplanted the existing apportionment plan, as prescribed by the charter, with a weighted voting plan which it ordered into effect temporarily, while directing the board to prepare charter amendments which would provide for permanent apportionment on a proper basis.

that this Court lacks jurisdiction under 28 U.S.C. 1253 to reach and decide the case on the merits.

Similarly, in No. 624 the challenge was directed against a State statute prescribing the apportionment and districting scheme for electing members of the county governing board, and State officials were among the defendants named. Nevertheless, the statute at issue related only to Houston County, Alabama, and could not therefore be properly viewed as a statute having general and statewide application.[137] Unlike the situation in No. 491, the three-judge court convened in this case made no mention whatever of the jurisdictional question relating to Section 2281 and the matter was not briefed or discussed by the parties. As in No. 491, it would appear that a three-judge court was improperly convened and that the case is not properly before this Court on direct appeal.

Should the Court conclude that three-judge courts were improperly convened in Nos. 491 and 624, and that appeals accordingly do not lie here, it may never-

[137] An argument could conceivably be made that, even though the statute involved was itself literally limited in application to one county, the convening of a three-judge court was still proper, since the statute challenged was very similar in form to other statutes relating to the composition of county governing boards in other Alabama counties. Thus, the argument would go, a matter of statewide interest was actually involved, because the court's decision would have at least some precedential effect as to the apportionment of a number of other Alabama county boards. We have found no case upholding such a basis for three-judge court jurisdiction under Section 2281; indeed, *Borges* v. *Loftis*, 87 F. 2d 784 (C.A. 9), points to a contrary result. See note 130, *supra*.

theless enter appropriate corrective orders.[188] Appeal from a judgment of an improperly convened three-judge court lies to the appropriate court of appeals,[189] but where an appeal is taken only to this Court the time within which to appeal to an intermediate appellate court will invariably have expired. Thus, the practice developed by this Court in such situations, in order to preserve the rights of the appellants, has been to vacate the judgment below and remand the case to the district court whose jurisdiction was initially invoked for the entry of a new order. Assuming that the Court reaches and decides the question of the applicability of the equal-population principle to local governmental bodies in the other pending cases and holds in favor of applicability, such a remand need not be a time-consuming or wasteful step. No new hearings or briefs would be required. In No. 491, the single judge might well determine to adopt the opinions and orders of the three-judge court, which he joined, as his own. In No. [redacted], Judge Johnson, who dissented from the judgment of the three-judge court, would be free, upon remand, to enter his dissent as the opinion and judgment of the district court.

Consideration of the thorny and difficult jurisdictional problems should not, in our view, be permitted to obscure or color the broad and important constitutional question raised in these four cases. That question is simply whether the equal-population principle

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[188] See *e.g.*, *Bailey* v. *Patterson*, 369 U.S. 31, 34, and the cases there cited.

[189] See *Phillips* v. *United States*, 312 U.S. 246, 254.

of *Reynolds* applies to bodies of local government whose members are elected from districts. For the reasons developed at length in our brief, that question, we submit, should be answered affirmatively.

CONCLUSION

For the reasons stated, the judgment of the court below in No. 430 should be reversed, and the judgment of the court below in No. 724 should be affirmed. Assuming that three-judge courts were properly convened in Nos. 491 and 624, the judgment in No. 491 should be affirmed and the judgment in No. 624 should be reversed. Should the Court conclude, however, that it lacks jurisdiction on direct appeal in either Nos. 491 or 624, then the judgment should be vacated and the case remanded to the district court.

Respectfully submitted.

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MARCH 1967.

APPENDIX A–I

Section 294a of the Michigan School Code (Mich. Stat. Ann. § 15.3294(1)) provides as follows:

> The members of the board shall be elected biennially on the first Monday in June by a body composed of 1 member of the board of education of each constituent school district, who shall be designated by the board of education of the constituent school district of which he is a member. The secretary shall send a notice by certified mail of the hour and place of meeting to the secretary of the board of education of each constituent school district at least 10 days prior to the meeting. The president and secretary of the board shall act as chairman and secretary, respectively, of the meeting. The term of office of each member elected to the board shall be for 6 years and shall begin on July 1 following his election, except as hereinafter provided. Not more than 2 members of the board shall be from the same school district unless there are fewer districts than there are positions to be filled. Any vacancy shall be filled by the remaining members of the board until the next biennial election. Notice of the vacancy shall be filed with the state board of education within 5 days after its occurrence. If the vacancy is not filled within 30 days after it has occurred, it shall be filled by the state board of education. Candidates for election to the board shall be nominated by petitions which shall be signed by not less than 50 school electors of the district who are registered to vote in the city or township where they reside. Any qualified elector

shall be eligible to sign as many petitions as there are vacancies to be filled. Nominating petitions shall be filed with the secretary of the board not later than 30 days prior to the date of the biennial election. The secretary shall determine the sufficiency of said petitions, and the eligibility of the candidates therein nominated. The secretary shall cause to be prepared, printed or duplicated ballots for the biennial election, listing on said ballots the names of all candidates properly nominated. If no nominating petitions have been filed for a candidate to fill a vacancy then, in this event and only in this event, the chairman of the biennial election may accept nominations for that vacancy from the floor. * * *

Appendix A–II

Sections 201 and 203 of the Suffolk County Charter (Ch. 278, Laws of New York, 1958) provide as follows:

> § 201. The board of supervisors; general powers. The supervisors of the several towns of the county, when lawfully convened, shall constitute the board of supervisors of the county. It shall be the legislative and policy determining body of the county and shall, except as otherwise expressly provided in this charter, have and exercise all the powers and duties of the county together with all the powers and duties which now are, or may hereafter be, conferred or imposed on boards of supervisors by all laws applicable to the county not inconsistent with this charter. The board of supervisors shall also have such other powers and duties as are provided by this charter.
>
> § 203. Voting; quorum. Each supervisor shall have one vote. A majority of the whole number of the members of the board shall constitute a quorum. Except as otherwise provided by law, local laws and resolutions shall be adopted by a vote of not less than a majority of the total membership of the board. In case of a tie vote on any matter at any meeting of the board of supervisors the county executive shall have a casting vote, provided, however, that he shall not have a vote as to any local law or resolution which provides a new form of government for the county or changes the voting strength of the supervisors, or which changes the location of the county seat.

Appendix A–III

Section 2 of Act No. 9, Acts of Alabama, Regular Session, 1957, provides as follows:

Section 2. That Houston County, Alabama, is hereby divided into five (5) Board of Revenue and Control Districts, as follows: District Number 1 shall embrace and be composed of Beats Number 1, 2, and 4 and shall be represented by the incumbent Commissioner, H. A. Hollis; District Number 2 shall embrace and be composed of Beats Number 5, 6, 7, and 11 and shall be represented by the incumbent Commissioner, F. C. Jackson; District Number 3 shall embrace and be composed of Beats Number 10, 12, and 14 and shall be represented by the incumbent Commissioner, W. Harvey Hicks; District Number 4 shall embrace and be composed of Beats Number 8, 9, and 13 and shall be represented by the incumbent Commissioner, G. D. Raley; and District Number 5 shall embrace and be composed of Beat Number 3. The Governor is authorized and empowered to appoint a member of the Board of Revenue and Control, as hereby created, effective upon the bill or act becoming a law, to serve as District Commissioner of District Number 5, and who shall serve until his successor is elected at the General Election to be held on the first Tuesday after the first Monday in November, 1958, and becomes qualified, and who shall receive as compensation the sum of $1,200.00 per annum payable in the same manner and from the same funds of the County with which the other Commissioners are paid. One member of said Board of Revenue and Control hereby

created shall hereafter be nominated and elected by the voters of each of the above-numbered districts, and he shall have been a resident of and a qualified elector in the District for a period of two years time immediately preceding the General Election to be held on the first Tuesday after the first Monday in November, 1958, and shall continue to reside therein during his continuance in office; and the members elected shall assume the duties of their office on the first Monday after the second Tuesday in January, 1959, following their election, and shall hold office for a period of four (4) years and until their successors are elected and qualified. Candidates for membership on the Board of Revenue and Control for Houston County, Alabama, shall be nominated by the voters of his respective district in the Primary next preceding the General Election at which time they shall be elected by the voters of his respective district.

APPENDIX A–IV

Sections 3.01 and 3.02 of the Charter of the City of Virginia Beach (Ch. 147, Acts of Assembly, 1962, as amended by ch. 39, Acts of Assembly of Virginia, 1966) provide as follows:

§ 3.01 COMPOSITION. The City shall be divided into seven boroughs. One of such boroughs shall comprise the City of Virginia Beach as existing preceding the effective date of this charter and shall be known as the borough of Virginia Beach, and the remaining six boroughs shall comprise the six magisterial districts of Princess Anne County as existing immediately preceding the effective date of this charter and shall be known as the boroughs of Bayside, Blackwater, Kempsville, Lynnhaven, Princess Anne (formerly known as Seaboard) and Pungo. The council shall consist of eleven members, one to be elected by the city at large from among the residents of each of the seven boroughs and four to be elected by and from the city at large.

§ 3.02 ELECTION OF COUNCILMEN. On the second Tuesday in June in 1966, and on the second Tuesday in June of every fourth year thereafter, there shall be a general election at which the qualified voters of the city shall elect eleven councilmen for terms of four years beginning the first day of September next following the date of their election and until their successors are duly elected and qualified. Each candidate shall state whether he is running at large or from the borough of his residence, but otherwise, candidates shall be nominated under general law. Election and qualification of councilmen in nineteen hundred sixty-six shall terminate the terms of all incumbent councilmen even though they may have been elected for longer terms.

APPENDIX B–I

	All units	Counties	Municipalities	Townships	School districts			Special districts		
					Total	Taxing power	Elected	Total	Taxing power	Elected
Ala.	782	67	349	-------	114	114	67	202	-------	-------
Alaska	86	-------	40	-------	10	10	10	6	6	-------
Ariz.	378	14	61	-------	251	251	251	52	52	52
Ark.	1,306	75	417	-------	417	417	417	299	-------	119
Calif.	4,022	57	373	-------	1,630	1,630	1,628	1,962	1,755	Most
Colo.	1,193	62	253	-------	312	312	312	556	419	Some
Conn.	398	-------	34	152	8	8	8	204	166	*M.T.
Del.	207	3	51	-------	90	-------	Few	63	-------	-------
Fla.	764	67	366	-------	67	67	67	264	96	*M.T.
Ga.	1,218	159	561	-------	197	197	Mixed	301	-------	-------
Hawaii	20	3	1	-------	-------	-------	-------	16	-------	16
Idaho	534	44	200	-------	121	121	121	469	374	*M.T.
Ill.	6,482	102	1,251	1,433	1,540	1,540	1,530	2,126	1,982	Some
Ind.	3,091	92	546	1,009	894	894	Most	550	230	-------
Iowa	2,642	99	944	-------	1,336	1,336	1,336	323	72	Some
Kan.	5,410	105	618	1,846	2,261	2,261	2,261	890	764	Most
Ky.	872	120	355	-------	208	208	208	179	26	Some
La.	628	62	258	-------	67	67	67	241	208	-------
Maine	656	16	21	470	26	26	Most	125	18	Some
Md.	351	23	152	-------	-------	-------	-------	176	16	-------
Mass.	556	12	39	312	29	29	Some	194	87	*M.T.
Mich.	3,816	83	509	1,259	1,866	1,866	1,866	99	7	Few
Minn.	5,212	87	845	1,822	2,343	2,343	2,343	115	24	Most
Miss.	772	82	266	-------	158	158	Some	266	1	Few
Mo.	3,726	114	892	329	1,649	1,649	1,649	742	83	Some
Mont.	1,387	56	124	-------	1,015	1,015	1,015	192	106	Most
Neb.	5,124	93	537	478	3,264	3,264	3,264	752	551	Most
Nev.	136	17	17	-------	17	17	17	85	30	Most
N.H.	550	10	13	221	221	221	221	85	70	70
N.J.	1,395	21	334	223	512	512	512	295	147	147
N. Mex.	305	32	80	-------	91	91	Most	102	24	102
N.Y.	3,902	57	612	932	1,231	1,231	1,224	970	963	-------
N.C.	675	100	449	-------	-------	-------	-------	126	27	Most
N. Dak.	3,028	53	356	1,387	986	986	986	246	153	Most
Ohio	3,358	88	932	1,328	833	833	833	177	87	Some
Okla.	1,950	77	533	-------	1,225	1,225	1,225	124	10	Most
Ore.	1,460	36	222	-------	484	484	484	727	484	Most
Pa.	6,201	66	1,008	1,555	2,179	2,179	2,177	1,306	-------	-------
R.I.	97	-------	8	31	2	2	-------	56	48	48
S.C.	552	46	255	-------	109	Some	-------	142	73	Some
S. Dak.	4,463	64	307	1,072	2,940	2,940	2,940	80	10	80
Tenn.	657	96	280	-------	14	Some	Some	268	-------	Some
Tex.	5,327	254	866	-------	1,474	1,474	1,474	733	396	Many
Utah	423	29	212	-------	40	40	40	142	80	Many
Vt.	424	14	65	239	32	-------	32	73	59	72
Va.	390	95	236	-------	-------	-------	-------	46	-------	Some
Wash.	1,646	39	263	66	411	411	411	867	669	Most
W. Va.	389	55	224	-------	55	55	55	55	3	Some
Wis.	3,726	72	563	1,271	1,752	1,752	1,752	68	4	Some
Wyo.	464	23	90	-------	207	207	207	144	43	Most
D.C.	2	-------	1	-------	-------	-------	-------	1	-------	-------
Totals	91,185	3,043	17,997	17,144	34,678	(**)	(**)	18,323	9,457	(**)

*"M.T." means most of those with taxing power.
**No accurate figures available.

Source: Bureau of the Census, 1962 Census of Governments, Tables 12 and 13; "Individual State Descriptions," *id.* at 243 *et seq.*

Appendix B–II

A. States in which members of county governing board are elected at large without restrictions:

Maine
Ohio
Oregon
Pennsylvania
Utah
Vermont
Wyoming

B. States in which members of county governing board are, or can be, elected by districts with districting under local control:

Arizona*
California*
Florida*
Idaho*
Iowa*
Kansas*
Kentucky*
Louisiana
Minnesota
Mississippi*
Missouri*
Nebraska*
New York
North Dakota*
Oklahoma*
South Dakota*
Texas*
Virginia
Washington**
Wisconsin*

C. States in which members of county governing boards are elected at large with district residence requirements, with districting under local control:

Colorado*
Indiana
Montana*
New Mexico*
West Virginia*

*State law directs local unit to district on basis of population, or on basis of population plus other factors, such as area, convenience, or compactness.

**Members are nominated by districts, elected at large.

D. States in which members of county governing board are usually elected by districts, with districting done by State legislature:

Alabama	Michigan
Arkansas	Nevada
Delaware	New Hampshire
Georgia	New Jersey
Hawaii	North Carolina ***
Illinois	South Carolina
Maryland	Tennessee
Massachusetts	

*** Members are elected at large with district residence requirements fixed by State legislature.

Source: Bureau of the Census, Governing Boards of County Governments: 1965.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 480

SAILORS, *Appellant*,

v.

BOARD OF EDUCATION OF KENT COUNTY, *Appellee*.

No. 491

BOARD OF SUPERVISORS OF SUFFOLK COUNTY, NEW YORK, *et al.*, *Appellants*,

v.

I. WILLIAM BIANCHI, JR., *et al.*, *Appellees*.

No. 624

MOODY, *Appellant*,

v.

FLOWERS, *Appellee*.

No. 724

DUSCH, *Appellant*,

v.

DAVIS, *Appellee*.

BRIEF OF COUNTY OF NASSAU AS AMICUS CURIAE

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IN THE

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No. 430

SAILORS, *Appellant*,

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DUSCH, *Appellant*,

v.

DAVIS, *Appellee*.

BRIEF OF COUNTY OF NASSAU AS AMICUS CURIAE

Statement

A. Interest of Nassau County.

Issues of vital concern to Nassau County, New York are raised in these actions concerning (1) the applicability to local legislative bodies of the principle of "one-man, one-vote" enunciated by this Court in *Reynolds* v. *Sims* and companion cases, and (2) the constitutionality in the *Bianchi* case of a permanent scheme of weighted voting for the legislative body on the county level. On the issue of weighted voting, Nassau County has a particularly sub-

stantial interest since its Board of Supervisors, the County's legislative body, has operated under a weighted voting system since 1938. No other local legislative body has utilized this device on a permanent basis or has shared this unique experience for such a long period.

In the interest of fair and effective representation on the county level for the 1,400,000 residents of Nassau County, Eugene H. Nickerson, as County Executive and Chairman of the Board of Supervisors, has directed the County Attorney, as the County's authorized law officer, to sponsor this brief in these cases in behalf of the County of Nassau.

B. Position of Nassau County.

It is the position of Nassau County that the sound constitutional principle enunciated in *Reynolds*, requiring districts of substantially equal population to achieve fair and effective representation for all citizens on the state level, applies with equal force to local governing bodies elected from districts, such as county boards and city councils.

Weighted voting authorized by the federal district court in *Bianchi* is not deemed to be an appropriate permanent device and doubt is raised as to its constitutional validity.

Insofar as the jurisdictional question is concerned, it is the view of Nassau County that the three-judge court was properly convened in the *Bianchi* case.

Introduction

The emergence of the county as the dominant, basic and most common unit of local government in New York State is nowhere better illustrated than in the case of both Nassau and Suffolk Counties. Long antedating the present concern for strong county government to deal with rapidly

increasing areas of county responsibility, Nassau County adopted a charter form of government in 1936 (L. 1936, ch. 879) providing for a county executive and permitting more effective methods for coping with constantly increasing demands being made on county governments. Nassau County was the first charter county in New York State and one of the first in the United States.

Suffolk County adopted its charter in 1958 (L. 1958, ch. 278) in its program to modernize its local government in order to deal more effectively with its rapid population expansion and attendant problems of suburbanization and urbanization.

Nassau County, with a population in 1960 of 1,300,171 (a population larger than fifteen states according to 1960 census figures), and Suffolk County with a population of 666,784 in 1960, are obviously significant and substantial units of local government. Moreover, counties generally throughout the state "have been an integral part of New York's governmental structure since early colonial times, and the many functions performed by the counties today reflect both the historic gravitation toward the county as the central unit of political activity and the realistic fact that the county is usually the most efficient and practical unit for carrying out many governmental programs." *WMCA, Inc.* v. *Lomenzo, et al.*, 377 U.S. 633, 761-62 (1964) (dissenting opinion).

At issue here, therefore, is whether the constitutional principle that requires a state legislature to be apportioned on a population basis to achieve fair and effective representation for all citizens should be extended to governing bodies of local government.

I. A three-judge court was properly convened in the Bianchi case to decide the constitutional validity of statutory provisions having general statewide application.

The jurisdiction of the three-judge court that was convened to hear the *Bianchi* case and had retained jurisdiction and held many hearings during the past five years has been questioned. See Memorandum of the Solicitor General in support of the Petition for a Writ of Certiorari in *Avery* v. *Midland County, Texas, et al.*, No. 958, October Term 1966.

There is no disagreement with the Solicitor General's statement of the applicable law that the convening of a three-judge court is authorized "only when a State statute of general, state-wide application is challenged and sought to be enjoined" but is not proper "where only a local ordinance or a State statute of limited application" is involved. Memorandum of Solicitor General, *supra* at pp. 3-4. But the Solicitor General errs when he suggests that the constitutional challenge in this case is limited to a state statute of only limited application.

The composition of the Suffolk County Board of Supervisors provided by section 201 of the Suffolk County Charter (L. 1958, ch. 278) is an almost exact reenactment of, and in fact superseded, section 150 of the County Law, indisputably a statute of general state-wide application.

Section 201 of the Suffolk County Charter provides:

> "The supervisors of the several towns of the county, when lawfully convened, shall constitute the board of supervisors of the county."

Section 150 of the County Law, from which the Suffolk County Charter provision was derived, provides:

> "The supervisors of the several cities and towns in each county, when lawfully convened, shall constitute the board of supervisors of the county."

The only distinction between the two provisions is that the County Law provides for representation of cities on the board of supervisors. Since Suffolk County has no cities, no provision for representation from cities was made in its charter. The Suffolk Charter did not, therefore, effect any change in the manner in which members of the board of supervisors are composed. Thus, before and after the adoption of its charter, the Suffolk Board of Supervisors consisted of one supervisor from each of its ten towns, notwithstanding the substantial variations in the population of the towns. Each town elects one supervisor, as provided by section 20 of the Town Law, applicable to all towns throughout the state.*

At the time the three-judge court was convened in the *Bianchi* case in 1962, all of the fifty-seven counties in New York State, not including the five counties comprising the City of New York, utilized the identical method of selecting members of their boards of supervisors, either in compliance with the County Law in fifty-one counties or the charter law of the six counties that had at that time adopted a charter form of county government.** The charters of each of the six counties continued the same method of selecting members of the board of supervisors as that provided by the County Law.

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* The Town of Hempstead (with a population of 728,625 in 1960) is represented by two supervisors on the Nassau County Board of Supervisors by virtue of section 41 of the Town Law.

** Of the 57 counties selecting members of their boards of supervisors in the same manner as provided by section 150 of the County Law, the only county then *not* providing for an equal vote for each supervisor was Nassau County, which since 1938 has used a weighted voting system. See County Government Law of Nassau County, §104 (L. 1936, ch. 879). Pursuant to section 203 of the Suffolk Charter, each supervisor has one vote; section 153(4) of the County Law provides that action of the board of supervisors shall be taken by the affirmative vote of a majority of the total membership of the board.

The County Law is, of course, a statute of general state-wide application; the composition of the boards of supervisors of at least 50 counties in the state was governed thereby at the time the three-judge court was convened. In addition, the then six charter counties, including Suffolk, utilized the very same method prescribed by the County Law for selecting members of the boards.*

A determination that section 201 of the Suffolk County Charter is constitutionally invalid would result in the applicability to Suffolk County of section 150 of the County Law since section 103 of the Suffolk County Charter provides:

> "All special laws relating to Suffolk county and *all general laws of the state shall continue in full force and effect* except to the extent that such laws have been amended, modified or superseded in their application to Suffolk county by enactment and adoption of this charter." (Emphasis supplied.)

To the extent that a provision of the Suffolk Charter is invalidated, the County Law, as the general state law, would be substituted and continued in its place. In such event, it may be deemed that the invalid 1958 charter provision never effected a repeal or superseded the County Law which, prior to that time, governed the manner in which the county board was composed. See *e.g., Matter of Markland* v. *Scully*, 203 N.Y. 158, 166 (1911) ("the section of the charter as it existed before the amendment must be deemed to remain in force"); *People ex rel. Farrington* v. *Mensching*, 187 N.Y. 8, 22-3 (1907); *People ex rel. Smith*

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* Since the commencement of the *Bianchi* action, two other counties (Herkimer and Schenectady) have adopted charters, and nine others have adopted local legislation relating to apportionment of their county legislative body. These eleven counties now use a mode of selecting members of the county boards of supervisors or of allotting votes thereon which differs from that provided by the County Law.

v. *Schiellein*, 95 N.Y. 124, 131 (1884); McK. Statutes, §377. See also, *Norton* v *Shelby County*, 118 U.S. 425, 442 (1886).

Thus, if section 201 of the Suffolk Charter is deemed constitutionally invalid, then section 150 of the County Law must fall as well. Every county in New York State outside of New York City would thus be vitally affected.*

Inasmuch as section 201 of the Suffolk County Charter and section 150 of the County Law are not only virtually identical but also so highly interdependent, it must be concluded that at issue here is a law of general state-wide application. The practicality of this conclusion was recognized by the state courts when both section 201 of the Erie County Charter, a re-enactment of the County Law provisions concerning the selection of members of boards of supervisors, and section 150 of the County Law were declared constitutionally invalid. *Graham* v. *Board of Supervisors*, 18 N.Y.2d 672 (1966).

A clear distinction exists between the *Bianchi* case and *McMillan* v. *Wagner*, 239 F. Supp. 32 (S.D.N.Y. 1964), where the court properly found "that [the New York City] charter applies only to New York City. It is not a state statute of state-wide application." Similarly, *Griffin* v. *School Board of Prince Edward County*, 377 U.S. 218 (1964), concerned a situation unique to Prince Edward County. But here, section 201 of the Suffolk County Charter or virtually identical provisions applied, at the time this action was instituted, not to one but to all the 57 counties outside of New York City. Unlike *McMillan* and *Griffin*, at stake in the *Bianchi* case is a state-wide system of general application and not a situation of merely local importance unique only to a single city or a single county.

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* The extreme population variances existing in almost every county in the state is documented in tabular form in Weinstein, *The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government*, 65 Colum. L. Rev. 21, 51-54 (1965).

II. The principle of "one-man, one-vote" enunciated by this Court in Reynolds v. Sims applies to the governing bodies of counties and other local governments and requires that such bodies be apportioned substantially on a population basis.

The establishment by this Court of the doctrine of "one-man, one-vote" was a milestone in achieving "full and effective participation by all citizens" and "fair and effective representation for all citizens" in state government. *Reynolds* v. *Sims*, 377 U.S. 533, 565 (1964). No argument should be sustained which would deny the "inalienable right" to effective participation in the political processes to citizens of local governments that possess and exercise important and substantial legislative powers.

The federal and state courts, with almost unanimity, have unhesitatingly applied the *Reynolds* principles to county and city legislative bodies. *E. g., Graham* v. *Board of Supervisors of Erie County*, 18 N.Y. 2d 672 (1966); *Seaman* v. *Fourdich*, 16 N.Y. 2d 94, (1965); *Brower* v. *Bronkema*, 377 Mich. 616 (1966); *Ellis* v. *Mayor and City Council of Baltimore*, 352 F. 2d 123 (4th Cir. 1965). The sole exception, *Avery* v. *Midland County, Texas*, 406 S.W. 2d 422, 426 (1966), was grounded on the determination that the "legislative functions [of the county commissioners court] are negligible"—a situation which, if true in Texas, is clearly not the case in New York State, where county legislative bodies have substantial legislative powers.

In New York State, it is the board of supervisors which exercises the legislative function in the county. The Suffolk County Charter provides, in section 201, that the board of supervisors "shall be the legislative and policy determining body of the county." Similarly, the Nassau County Charter, section 102, refers to the board of supervisors as "[t]he governing body of the county." That all county legislative bodies shall be elected by the people

is constitutionally mandated. "Every local government . . . shall have a legislative body elected by the people thereof." N. Y. Const., art. 9, §1(a).

County boards possess vast local law power to enact legislation of equal dignity with state laws. Since 1846, when the State Constitution was first amended to allow the Legislature to confer local law powers on county boards, efforts have been successful to expand the local legislative authority of the county boards to include more and more areas of public concern. See *e.g.*, L. 1875, ch. 482; N. Y. Const. art. 3, §27 (1894); N. Y. Const. art. 9, §4 (1938). At the present time, the county boards have extensive home rule powers and may adopt and amend local laws that relate to "its property, affairs or government" [N. Y. Const. art. 9, §2(c)(i)] as well as laws not so relating covering substantial subjects [*Id.* at §2(c)(ii)]. Although many of the home rule powers set forth in the State Constitution are self-enacting, the Legislature has adopted supplementary legislation enumerating the numerous areas in which county boards may legislate. See Municipal Home Rule Law, §10, subds. 1(i), 1(ii) (a) and (b). The authority of a county board of supervisors to oversee county business and affairs by ordinance and resolution is similarly extensive. See, *e.g.*, Article 5 of the County Law.

The significant power vested in the board of supervisors to adopt a charter form of county government subject to approval by the people [Municipal Home Rule Law, art. 4, §§33(1), 33(7)(b)] and the scope of the home rule powers permitted to be contained in such a charter or an amendment thereto [*Id.* at §§33(2), 33(3)] are an acknowledgment that the county is the central unit of local governmental activity. The Governor, in his message approving the then new County Charter Law (L. 1959, ch. 569) authorizing a charter form of government for all counties (subsequently superseded by substantially similar provisions in Article 4 of the Municipal Home Rule Law), stated that:

> "It is the intention of this new article to permit county home rule to be used as an instrument for the more efficient handling of the varying problems of different counties . . . or to assume powers which have been exclusively those of the state.
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> "This legislation should enable counties to meet more effectively the ever-increasing demands that are being made on local government." McK. 1959 Session Laws of New York, 1753-54.*

The dynamic increase of services offered by Nassau County and its acceptance of governmental responsibility on the local level in diverse areas of public concern is illustrative of the substantial legislative powers vested in the county unit. As recent examples of the expanding spheres of activity engaged in, Nassau County has created by local law several new governmental departments to meet the diverse needs of the residents of the County, including, for example, the first County Commission on Human Rights in New York State (Local Law No. 5, 1963), a Department of Labor (Local Law No. 1, 1963) and a Department of Commerce and Industry (Local Law No. 1, 1964). Nassau County has also, by local law, placed all employees of the Sheriff's Office under civil service and eliminated the Sheriff as an elected officer with provision for his appointment by the County Executive (Local Law No. 14, 1965). The broad power of the county board is further typified by the scope of activities requiring local

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* Similarly, the increasing stature of county governments was recognized by the Attorney General of New York State when he stated that the County Charter Law "providing opportunity for the fundamental reorganization of county governments by county residents has given the county an even greater role to play in the social, economic and political life of modern New York." *WMCA, Inc.* v. *Lomenzo, et al.*, 377 U. S. 633, 763, M. 18 (1964) (citing Brief for Appellees Secretary of State and Attorney General, No. 20, 1963 Term, pp. 42-43).

legislative action, in order, for example, to provide for the acquisition of land for the establishment of parks, recreation areas and the constant expansion of the network of county roads and highways, to support an active county hospital facility, to provide substantial health and welfare services, to construct sewer facilities, to establish a county airport and to support cultural activities.

The size of county budgets similarly reflect the important role of the county unit. The board of supervisors has the power to approve the county budget which, for the current fiscal year, in Nassau County totalled $376,334,702.00, including $190,853,504.00 for general fund expenditures, and in Suffolk County totalled $113,181,400.00 including $87,255,635.00 for general fund purposes.

A board of supervisors in New York State is clearly a body with grave and important legislative functions and responsibilities and assumes in certain respects what may ordinarily be considered state powers.

To deny equal representation on the county governing body to all county residents and to permit the invidious discrimination inherent in the present apportionment scheme for county legislative bodies* is as much a violation of the Equal Protection Clause, with the attendant deprivation of the right of each citizen to his inalienable right to effective participation in the political processes on the local level, as it was on the state level prior to this Court's historic pronouncements. The rationale and principles enunciated in *Reynolds* and companion cases apply to the legislative bodies of local governments.

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* See Table of Representation on Boards of Supervisors in New York State in Weinstein, *The Effect of the Reapportionment Decisions on Counties and Other Forms of Municipal Government*, 65 Colum. L. Rev. 21, 51-54 (1965).

III. A permanent scheme of weighted voting for a local legislative body is violative of the Equal Protection Clause of the Federal Constitution.

The constitutionality of weighted voting as a permanent scheme for equalizing voting power is of concern to Nassau County as its governing body has been operating under a weighted voting system since 1938. County Government Law of Nassau County, §104 (L. 1936, ch. 879). The issue is raised in the *Bianchi* case since a permanent weighted vote plan for the board of supervisors was authorized by the Federal District Court and adopted at the last general election.

The Nassau County Board of Supervisors consists of six members representing the three towns and two cities of the County. As apportioned pursuant to the 1960 census, the range of voting strength is from 31 weighted votes for each of the two supervisors from the Town of Hempstead, with a population of 728,625, to two votes each for the supervisors from the City of Long Beach, population 25,654, and the City of Glen Cove, population 22,752.

While "weighted voting may be useful in rare cases as a stopgap to comply with the constitutional mandate [for a fair apportionment] when there is no time for a proper apportionment" (Weinstein, *The Effect of the Federal Reapportionment Decisions on Counties & Other Forms of Municipal Government*, 65 Colum. L. Rev. 21, 46 [1965]), it is urged here that a permanent weighted voting system is not compatible with the constitutional requirements of the Equal Protection Clause prescribed in *Reynolds*. Nassau County's position on this issue is in accord with the conclusion reached by the courts of this state, including the Court of Appeals. See *Graham* v. *Board of Supervisors of Erie County*, 18 N.Y. 2d 672, 674 (1966), where the state's high court approved a weighted voting plan solely as a temporary measure:

> "Although weighted voting has inherent defects, it does provide more of the attributes of equal representation than the existing apportionment of

> the Erie County Board of Supervisors. This being so, we approve the weighted voting plan adopted by the board . . . *but solely as a temporary expedient.* The board is directed to draft a permanent plan based on the principle of 'one man, one vote.'" (Emphasis supplied.)

See also, *Morris* v. *Board of Supervisors of Herkimer Co.*, 50 M. 2d 969, 273 N.Y.S. 2d 453 (Sup. Ct. 1966); *Shilbury* v. *Board of Supervisors of Sullivan Co.*, 46 M. 2d 837, 260 N.Y.S. 2d 931, 937 (Sup. Ct. 1965), *aff'd*, 25 A.D. 2d 688, 267 N.Y.S. 2d 1022 (3rd Dept. 1966).

Indeed, the federal and state courts have, with almost no exception, deemed weighted voting intrinsically unconstitutional as a permanent device. See cases cited in Weinstein, *supra*, 65 Colum. L. Rev. 21, 42-44. See also, *WMCA, Inc.* v. *Lomenzo, et al.*, 238 F. Supp, 916, 923 (S.D.N.Y. 1965), *vacated as moot*, 384 U.S. 887 (1966). The independent judgment of the many courts that have considered and rejected permanent weighted voting plans for local legislative bodies reveals a basic aversion to the system, resulting to some extent from its unsuitability to our representative form of government.

The issue concerning a permanent apportionment scheme based on weighted voting is as much a matter of Fourteenth Amendment concern as was legislative districting in the state apportionment cases. In *Reynolds*, this Court stated that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise" (377 U.S. at 555) and that "malapportionment can, and has historically, run in various directions." 377 U.S. at 567. However and wherever malapportionment exists, it is constitutionally impermissible under the Equal Protection Clause. Sophisticated as well as obvious malapportionment schemes were

thus declared violative of the Equal Protection Clause. Weighted voting is an apportionment device which may be deemed to debase or dilute a citizen's vote.

Weighted voting is not a "political" or otherwise "non-justiciable" issue. As in *Baker* v. *Carr*, 369 U.S. 186, 209 (1962), the issue of weighted voting "neither rests upon nor implicates the Guaranty Clause and . . . its justiciability is therefore not foreclosed . . . ." No political question is involved because "it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States which gives rise to the 'political question.'" *Id.* at 210. Involved here is the substantial question of whether an apportionment scheme based on weighted voting is violative of the Equal Protection Clause. While weighted voting has a certain surface simplicity which makes it attractive as a solution to attaining a fair apportionment, upon "careful judicial scrutiny" weighted voting emerges as a complex sophisticated uncertain device which may not permit attainment of the goal of "one-man, one-vote."

The constitutional defects of weighted voting are manifold. Basically, it fails to accomplish its purported objective of providing equality of voting power either on a theoretical or conceptional basis. See Banzhaf, *Weighted Voting Doesn't Work: A Mathematical Analysis*, 19 Rutgers L. Rev. 317 (1965); *Morris* v. *Board of Supervisors of Herkimer County*, 50 M.2d 929, 932, 273 N.Y.S. 2d 453, 456 (Sup. Ct. 1966). Moreover, "weighted voting presents serious operational . . . objections." Weinstein, *The Effect of the Federal Reapportionment Decisions on Counties & Other Forms of Municipal Government*, 65 Colum. L. Rev. 21, 45 (1965).

After an extensive computerized analysis undertaken pursuant to a grant from the National Municipal League and the Ford Foundation, it was concluded that "[i]n almost

all cases weighed voting does not do the one thing which both its supporters and opponents assume that it does: weighted voting does not allocate voting power among legislators in proportion to the population each represents because *voting power is not proportional to the number of votes a legislator may cast.*" Banzhaf, *supra*, at 318. (Emphasis in original.) The fallacy, frequently overlooked, is that the "more accurate" measure of a legislator's power is his ability "to affect the passage or defeat of a measure." *Ibid.*

The same computer-assisted analysis has led to the conclusion that "the Nassau County, New York, system of weighted voting is unconstitutional because half of the representatives have no power to affect legislative determinations . . . ." *Ibid.* "With all members present, only the three with the largest number of votes have any power to affect legislative outcomes. Any combination of two of the three will pass a measure and no measure will pass unless at least two of the three agree with it. No changes in the voting of any or all of the three smallest representatives will have anything other than a persuasive effect on the outcome of any proposal. They may as well stay home . . . ." *Id.* at 339. "Even in large bodies [such as the New Jersey Senate] there may be significant disparities, which may be magnified in the committees where so much of the legislative work is done." *Id.* at 340.

The unsuitability of weighted voting for Nassau County, the state's largest county outside of New York City, with a county board of only six members from three towns and two cities, representing 1,400,000 residents, has been demonstrated to apply to a similar extent to smaller counties with larger boards as well. An analysis made of a proposed weighted vote plan for Herkimer County, a rural county of under 70,000 population with twenty-one supervisors from a like number of towns, resulted in a similar conclusion to that reached for Nassau County:

"Weighted voting is not constitutionally acceptable as a permanent plan of reapportionment . . . . In this connection, with the consent of all counsel, a mathematical analysis was obtained by counsel for the Attorney General of New York from Mr. Banzhaf and clearly indicates the grave disparities which exist under weighted voting as proposed in Plan "B". For example, the Town of Newport has approximately ten percent (10%) less than the mean or unweighted average of the voting power based upon its population, but more than one hundred percent (100%) more voting power than the residents of the Town of Ohio. A voter in the Town of Manheim has a voting power over sixty percent (60%) greater than the average voter in Herkimer County and two hundred sixty percent (260%) more power in his vote than a citizen in the Town of Ohio. The seven representatives from the three largest communities, German Flatts, Herkimer and the City of Little Falls, cast, between them, 364, or well over half of the 673 total votes. *The other* 18 *members of the Board will be voices without impact or effect on legislation when these 7 representatives agree on any issue.* To plunge into a "mathematical quagmire", *Baker* v. *Carr*, 369 U.S. 186, 268, 82 S.Ct. 691, 7 L. Ed.2d 663 (1962) understood only by experts using computers, does not appear to this Court to be the path leading to equal representation of citizen voters in our local legislative bodies." *Morris* v. *Board of Supervisors of Herkimer Co.*, 50 M.2d 929, 932, 273 N.Y.S. 2d 453, 456 (Sup. Ct. 1965) (Emphasis supplied.)

Another constitutional infirmity of weighted voting is the practical operational effect of its implementation. Weighted voting will not resolve the inequality of representation that would result since so many important legis-

lative functions are not related to voting. As the court aptly noted, in *WMCA, Inc.* v. *Lomenzo, et al.*, 238 F. Supp. 916, 923 (S.D.N.Y. 1965), *vacated as moot*, 384 U.S. 877 (1966):

> "If voting were the only important function of a legislator, the scheme of fractional voting in Plans D and C would probably not offend "the basic standard of equality" among districts. But *legislators have numerous important functions that have nothing directly to do with voting*: participation in the work of legislative committees and party caucuses, debating on the floor of the legislature, discussing measures with other legislators and executive agencies, and the like. The Assemblyman who represents only one-sixth of a district can theoretically give each constituent six times as much representation in these respects as the Assemblyman who represents a full district. This disparity of representation persists even if the State is right in arguing that the Assemblyman with only one-sixth of a vote will carry only one-sixth as much political weight when he engages in these activities." (Emphasis supplied.)

Similarly, the Citizens' Committee on Reapportionment, in its report to the Governor, stated that:

> "If *Reynolds* requires equality of legislative representation, it seems clear that many aspects of the legislator's activity cannot be weighted, so that the device creates distortion rather than equality. *Speaking on the floor, committee membership, eligibility for committee chairmanship, and voting bills out of committee, for example, cannot be weighted.* A district entitled to two votes, for example, may well be entitled to two heads as well so that a dilution

of legislative representation ensues when only one head and two votes are granted." N.Y. Joint Legislative Committee on Reapportionment, Report, Leg. Doc. No. 76, p.36 (1964). (Emphasis supplied.)

But even if the problems of committee assignments* and voting could be solved, other difficulties inherent in a weighted voting system would still exist. "It gives rise to unlimited speculation as to committee appointments, the allotment of time in debate and the effect of the voices to be heard." *League of Nebraska Municipalities* v. *Marsh*, 209 F.Supp. 189, 195 (D.Neb. 1962). "Serious human and practical problems exist in a system of weighted voting which limits its usefulness on a permanent basis . . . . The question arises as to whether a legislator from Little Falls is permitted to make 9 times as many speeches, 9 times as many telephone calls and have 9 times as much patronage? When they serve on a committee together, does one legislator have 9 times as much power on that committee? If the weighted system is not followed on committee assignments then the disproportion which reapportionment seeks to correct is only partially corrected. If it is, meaningful representation by those who cast a small number of votes is lost. *Morris* v. *Board of Supervisors of Herkimer County*, 50 M.2d 929, 933, 273 N.Y.S. 2d 453, 456 (Sup. Ct. 1966).

However, no matter what procedures or rules are established in an attempt to minimize the defects of weighted voting, one uncontrovertible fact emerges. A district entitled to two or more votes and having but one man to cast them is under-represented. That one man cannot as effectively represent his constituency as would

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* Section 154 of the County Law, applicable to Suffolk County, provides that "The board of supervisors may create standing committees for the purpose of aiding and assisting the board in the transaction of its business . . . ."

two or more is clear. It is extremely doubtful that one legislator can make the same contacts, hold the same number of working committee assignments, meet the same number of constituents, influence and persuade other legislators or command the same attention as would two or more legislators.

Weighted voting is constitutionally impermissible as a permanent apportionment scheme because "[w]eighted voting tends . . . to represent districts rather than people in reality . . . ." Lockard, *Achieving Fair Representation in New Jersey*, 88 N.J.L.J. 1 (Jan. 7, 1965).

True representative government requires that "one-man, one-vote" apply within the legislative body itself. In this respect, it has been aptly stated that:

> "If we accept the democratic assumption that a body of equals with opportunity for free debate will generally reach a more favorable result than a body controlled by a single person who must, by hypothesis, be no better than the average, weighted voting will lead to less beneficial results than other forms of voting. The system is demeaning and frustrating to the able representative who is constantly overwhelmed by the voting power of a colleague whose influence and control are artificially increased."
>
> "*A deliberative democratic body—a legislature at its best—requires application of the concept of 'one-man, one vote' within the body itself, so that rational argument among equals can take place.* The attributes that make for leadership in such a body —honesty, preparation on issues, intelligence, ability to weave principle and practicality together, and dedicated interest in other members and in the work at hand—should determine individual weight within the body." Weinstein, *The Effect of the Federal*

Reapportionment Decisions on Counties & Other Forms of Municipal Government, 65 Colum. L. Rev. 21, 45-6 (1965) (Emphasis supplied.)

A majority of the bi-partisan Nassau County Commission on Governmental Revision, after five years of intensive study of the structure of Nassau County's government, concluded that:

> "But, entirely apart from the foregoing, weighted voting is not the equivalent of one man-one vote equal representation: it stifles the deliberative nature of the decision-making processes; it limits the effectiveness of the inter-change of persuasive debate; it places undue emphasis upon the individual supervisors, according their ideas significance related not to the quality of their ideas but to the weight of their vote. We believe that the deliberative, legislative and decision-making processes of the Board of Supervisors require that the relationship of its members towards one another be that of equals." Commission on Governmental Revision, *Final Report to the Board of Supervisors,* Dec. 12, 1966, p. 9.

A permanent weighted voting plan for a county legislative body does not comply with the standards of fair and equitable representation required by the Fourteenth Amendment. Thus, the principle and rationale of the federal court determination that a weighted or fractional voting plan for a state legislature "violates the XIV Amendment of the United States Constitution" (*WMCA, Inc.* v. *Lomenzo, et al.,* 238 F. Supp. 916, 923 [S.D.N.Y. 1965], *vacated as moot,* 384 U.S. 887 [1966]) should be applied to local legislative bodies. This conclusion is in accord with that reached by the New York Court of Appeals in *Graham* v. *Board of Supervisors of Erie County,* 18 N.Y. 2d 672 (1966).

CONCLUSION

For the foregoing reasons, the principle of "one-man, one-vote" should be held to apply to the governing body of local governments; weighted voting does not meet the requirements of the Equal Protection Clause and should be declared invalid as a permanent device.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL., APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

REPLY OF APPELLEE THE BOARD OF EDUCATION OF THE COUNTY OF KENT AND THE INDIVIDUAL APPELLEES AS MEMBERS THEREOF TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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CASES CITED

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Strickland v Burns, 256 F Supp 824, 837	2

STATUTES CITED

Michigan Statutes Annotated	
Section 5.359(1) et seq; Act No 261 PA 1966	2
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS;

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL., APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

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REPLY OF APPELLEE THE BOARD OF EDUCATION OF THE COUNTY OF KENT AND THE INDIVIDUAL APPELLEES AS MEMBERS THEREOF TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

The Solicitor General assumes to speak in "the interest of the United States in these cases" [Brief, page 6]. What is the interest of the United States? The question whether the Court will concern itself with the composition of local

units of government is fundamentally one of political philosophy on which American citizens may very well disagree.[1]

Will this Court assume that constitutionally apportioned legislatures "will fail to correct any malapportionment that may exist in its arms, agencies and instrumentalities, when corrective measures are needed" [Circuit Judge Harry Phillips in *Strickland v Burns*, 256 F Supp, page 837]?

In 1966 the Michigan legislature adopted Act No. 261 [Act No. 261 PA 1966; MSA § 5.359, et seq; approved by the Governor July 12, 1966; effective March 10, 1967], which provides in part that [MSA § 5.359(1)]:

> "On or before May 15, 1967, and in subsequent years within 60 days after the publication of the latest United States official decennial census figures, the county apportionment commission in each county of this state shall apportion the county into not less than 5 nor more than 35 county supervisor districts as nearly of equal population as is practicable and within the limitations of § 2. * * *"

---

[1] Current disagreement on political philosophy may be illustrated by the fact that the legislatures of 32 states [as of March 28, 1967] have passed resolutions in one form or another calling a Constitutional Convention for the purpose of submitting a constitutional amendment to the states which would secure to the people the right of some choice in the method of apportionment of one house of a state legislature on a basis other than population alone. See Appendix A. The week of March 26, 1967, the major newspapers of the Country commented on the discovery that only 2 more states were necessary to implement Article V of the Constitution. Of course, the newspaper comments varied widely. By way of illustration only, we attach the comment appearing in the New York Times issue of Sunday, March 26, 1967 as Appendix B and the comment appearing in the Wall Street Journal issue of Tuesday, March 28, 1967 as Appendix C.

This act was passed by the Michigan legislature without mandate from the Supreme Court of Michigan and that Court at this writing is still deadlocked [see *Brouwer v Kent County Clerk*, 377 Mich 616, 141 NW 2d 98 and *Muskegon Prosecuting Attorney v Klebering*, 377 Mich 666, 141 NW 2d 120].

The City Commission of the City of Grand Rapids, Michigan, is now in the process of reapportionment on a one man, one vote basis, pursuant to charter amendment unanimously submitted by the Commission and voted by the people of the city, without the mandate of any court.[2]

We refer again to the fact that the Michigan School Code [MSA, § 15.3294 (2 and 3)] does "authorize popular election of county school board members upon a favorable referendum vote within the county." See Appellants' Brief, page 14, Note 20 and Appendix E, pages 6a and 7a. Appellants' complaint that this provision is meaningless should be addressed to the Michigan legislature and not to this Court.

Time has not permitted us to assemble data as to what the several states have done, without court mandate, to reapportion local units on a population basis. We earnestly believe that such reapportionment can better be accomlished by the elected representatives of the people or the people of the units themselves than by the mandate of any court, if corrective measures are needed.

---

[2]Attached as Appendix D are extracts from the unanimously adopted resolution of the Grand Rapids City Commission submitting to the people the question of reapportionment of the city wards on an equal population basis.

February 21, 1966, the people of the city adopted the proposal by a vote of 12,877 to 5,176, more than 2 to 1. Attached as Appendix E is the report of the board of canvassers.

We urge again that "the cases before the Court do require 'reflection on political theory' " [Brief for Appellees The Board of Education of the County of Kent and the Individual Appellees as Members Thereof, at page 7].

CONCLUSION

The order entered below dismissing the Complaint, as amended, should be affirmed [R 223, 224].

Respectfully submitted,

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Attorneys for Appellee The Board of Education of the County of Kent and the Individual Appellees as Members Thereof

APPENDIX A

STATES WHICH HAVE PASSED RESOLUTIONS CALLING A CONSTITUTIONAL CONVENTION

	State	Date Passed
1.	Alabama	Feb, 1965
2.	Arizona	Jan, 1965
3.	Arkansas	Jan, 1965
4.	Colorado	Mar 14, 1967
5.	Florida	Jun, 1965
6.	Georgia	Mar, 1965
7.	Idaho	Mar, 1965
8.	Indiana	Mar 7, 1967
9.	Illinois	Mar 13, 1967
10.	Kansas	1965
11.	Kentucky	Sep, 1965
12.	Louisiana	May, 1965
13.	Maryland *	Mar, 1965
14.	Minnesota	May, 1965
15.	Mississippi	Jul, 1965
16.	Missouri	1965
17.	Montana	1965
18.	Nebraska	Mar, 1965
19.	Nevada	1965
20.	New Hampshire	Apr, 1965
21.	New Mexico	Feb, 1965
22.	North Carolina	May, 1965
23.	North Dakota	Mar 3, 1967
24.	Oklahoma	Jan, 1965
25.	South Carolina	Feb, 1965
26.	South Dakota	Feb, 1965
27.	Tennessee	Feb, 1965
28.	Texas	Feb, 1965
29.	Utah	Jan, 1965
30.	Virginia	Dec, 1964
31.	Washington	Apr, 1963
32.	Wyoming	Mar, 1963

* Resolution to rescind Maryland petition defeated in the State Senate March 27, 1967.

APPENDIX B

(New York Times, Sunday, March 26, 1967)

DIRKSEN'S END RUN

A New Attack On One Man, One Vote

The United States Government, which spends $425-million each year to publicize itself and is kibitized by about 1,000 Washington newsmen, is easily the most highly publicized institution in the world.

It is capable of producing columns of copy over the antics of a playboy Congressman, reams of information on the machinations of a spendthrift Senator and solemn White House pronouncements about the number of surviving whooping cranes.

Thus it was more in surprise than in anger that official Washington reacted last week to the news that Senator Everett McKinley Dirksen had very nearly hatched a plot to amend the Federal Constitution without anyone in Washington finding out.

Article V of the Constitution states that constitutional amendments can be proposed by a two-thirds vote of both houses of Congress—the way all of the present 25 amendments have been proposed.

But it also provides that "on the application of the legislatures of two-thirds of the several states, [Congress] shall call a convention for proposing amendments." Some scholars say Congress must call the convention; others say the decision is up to Congress. Congress would also decide how the convention would be constituted, and where and when it would meet. If any amendments were proposed, three-fourths of the states would still have to ratify them.

States Approve

An intriguing feature of the state legislative method is that the various state actions capable of vitally affecting

the Government in Washington can be taken without its knowledge.

Perhaps that was why the disclosures last week that 32 of the required 34 states had already approved petitions calling for a constitutional convention to modify the Supreme Court's one-man, one-vote rule caught Washington off guard, although the move had been three years in the making.

Late in 1964 the General Assembly of the States, an annual convention of state officials sponsored by the Council of State Governments, published a model petition for use by state legislatures that wished to call for constitutional convention on reapportionment.

It called upon Congress to convene the convention to propose an amendment to permit one house of a state legislature to be apportioned on a basis other than population. This would modify the Supreme Court's rule that both houses must be apportioned according to population.

The American Farm Bureau Federation threw its well-oiled lobbying mechanism behind the campaign, and by the fall of 1965, 26 states had approved this resolution.

Since two states—Washington and Wyoming—had passed resolutions in 1963 seeking to preclude the Federal courts from apportioning either house of a state legislature, the convention backers could claim 28 applications—only six short of the number necessary to ask Congress to convene the first constitutional convention since 1787.

By the time the legislatures convened again this winter, everybody, including the Farm Bureau Federation, had forgotten that the campaign was within six states of its goal—except Senator Dirksen.

He said nothing, but last month members of his staff began to turn up in such diverse places as Denver and Juneau, where they persuaded the legislatures to consider the Senator's resolution.

Lawyer Enters Picture

By mid-March, the legislatures of four more states—North Dakota, Indiana, Colorado and Illinois—had passed resolutions, and in two legislatures—Iowa and Alaska—the resolutions had passed one house and were pending in the other.

At this point, Arthur J. Freund, a St. Louis lawyer who follows such campaigns as a hobby, became concerned that the campaign had taken on new life, yet nobody could tell him who was responsible. He began to write law professors, journalists, civil liberties leaders and others, insisting that something was afoot.

By last weekend, groups in Washington were beginning to compare notes. Although no single group knew of more than 28 petitions, when the League of Women Voters, the Council of State Governments and the Library of Congress's legislative reference service put their lists together, they came up with Senator Dirksen's 32.

With the spotlight on his campaign, Senator Dirksen began to encounter opposition. Senators William Proxmire and Joseph D. Tydings said 26 of the petitions were void because the legislatures that passed them were malapportioned. It was widely reported that liberal Senators would filibuster, if necessary, to prevent Congress from calling the convention. A move began in the Maryland Legislature to rescind its resolution.

Many observers thought Senator Dirksen had no real hopes of calling a convention, and was using the campaign to build up momentum for another move to propose the amendment in Congress.

But with all the conversation in Congress, still nobody suggested keeping track of such campaigns in the future.

APPENDIX C

(The Wall Street Journal, Tuesday, March 28, 1967.)

DEFENDERS OF DEMOCRACY

It's amusing to note some of the hand-wringing now going on over this discovery: Petitions by only two more state legislatures would complete the two-thirds majority necessary to convene a Constitutional convention to set aside the Supreme Court's one-man, one-vote edict.

In 1964, it may be recalled, the Supreme Court ruled that both houses of all legislatures must be apportioned fundamentally on the basis of population. Senator Dirksen advocated an amendment limiting this doctrine to one house of bicameral legislatures, a proposal entirely consistent with American tradition and practice.

The proposed amendment fell a few votes short of the required two-thirds majority in the Senate, and its proponents turned to an alternate method of pushing it. The Constitution provides that Congress shall call a convention to propose amendments upon application by two-thirds of the state legislatures. In any case, amendments must also be ratified by three-fourths of the states through their legislatures or, at Congress' option, through special conventions.

Legislatures in 32 of the required 34 states have passed petitions asking for a convention on the Dirksen amendment. The League of Women Voters is upset. Senator Tydings, who led the Senate fight against the proposal, is looking for grounds whereby Congress could deny the states' petitions. The New York Times says the idea of a convention is "at best mischievous and at worst reckless." The Washington Post labels it an "assault on the Constitution."

What makes this somewhat amusing is the method used to outlaw the tradition the amendment seeks to restore. Six Supreme Court Justices decided, 175 years after the Constitution was adopted, that it countermanded state consti-

tutions, some of them antedating the Federal charter itself, which envisioned legislative apportionment reflecting historical or geographical factors in addition to population.

Now, the notion that the Supreme Court is the ultimate curator of the Constitution is well established and often useful. But it is nowhere spelled out in the Constitution itself. The procedure the Dirksen's amendment's proponents are using, on the other hand, is there for all to see in Article V. In other words, opponents of the convention are arguing it is somehow unfair to use the Constitution's explicit and solemn procedures to correct the judgment of precisely six men.

Opponents also raise the specter of a runaway convention, saying it might not restrict itself to the one amendment specified in the petitions from the legislatures. Even if a majority of the convention did overstep its mandate, of course, the necessity of ratification would preclude any amendments the people do not favor.

All of which leaves the strong suspicion that the fuss is really caused by a feeling that the people, if left to their own devices, might do some things the hand-wringing defenders of democracy do not approve.

APPENDIX D

PROCEEDINGS OF THE CITY COMMISSION CITY OF GRAND RAPIDS, MICH.

OFFICIAL

Regular Session, Tuesday Afternoon
November 30, 1965

• • •

16822. Your Committee on Reapportionment recommends the adoption of the attached resolution.

Bernard Barto, Berton Sevensma, Edward C. McCobb, Committee on Reapportionment.

COM. BARTO moved the adoption of the following resolution:

WHEREAS, Section 3 of Title I of the Charter of the City of Grand Rapids provides:

"Ward Divisions. Sec. 3. The City of Grand Rapids shall be divided into three wards, as follows:

"First Ward, all that part of the City lying west of the center of Grand River; Second Ward, all that part of the City lying east of the center of Grand River and north of the center line of Wealthy Street; Third Ward, all that part of the City lying east of the center of Grand River and south of the center line of Wealthy Street."

and

WHEREAS, under Section 2 of Title II of the Charter of the City of Grand Rapids two Commissioners are elected from each of the three wards to the City Commission, and

WHEREAS, there is a large disparity between the total number of people living in each ward under the existing ward boundaries which results in unequal representation for each ward in the City Commission, and

WHEREAS, it is deemed to be in the interests of good government to district and apportion the three wards of the City so the population of such wards shall be as nearly equal as possible and each ward shall be equally represented on the City Commission, Now, therefore

BE IT RESOLVED that the City Commission of the City of Grand Rapids, pursuant to the authority granted by Act 279 of the Public Acts of Michigan of 1909, as amended, and by a 3/5ths vote of its members elect, does hereby propose that the following amendment to the Charter be submitted to the electors of the City for adoption or rejection at an election for said purpose to be held in conjunction with the Municipal Primary Election on Monday, February 21, 1966:

That said Charter be amended by amending Section 3 of Title I, so that Section 3 will read as follows:

Ward Divisions. Sec. 3. The City of Grand Rapids shall be divided into three wards, as follows:

First Ward, all that part of the City lying west of the center of Grand River; Second Ward, all that part of the City lying east of the center of Grand River and north of the center line of Wealthy Street; Third Ward, all that part of the City lying east of the Center of Grand River and south of the center line of Wealthy Street.

Within one year after the adoption of this Charter Amendment, and thereafter within one year after the official total population count of each federal census of the City of Grand Rapids is available, the City Commission shall by ordinance district and apportion the three wards of the City of Grand Rapids so the population of such wards shall be as nearly equal as possible. Such wards shall be as compact and contiguous as possible, considering natural and established boundaries and streets.

BE IT FURTHER RESOLVED that said election be held Monday, February 21, 1966, and that in accordance with Act 279 of the Public Acts of 1909, as amended, the proposed amendment be submitted to the electors of the City at said election and that the Clerk shall:

1. Forthwith transmit a copy of the proposed amendment to the Governor of Michigan for his approval and a copy to the Attorney General for his approval of the form in which that proposition shall be presented to the electors.

2. Do and perform all acts required by the Charter and the laws of the State relative to the giving of notice of such election and of the registration of electors therefor, and

3. Make all necessary arrangements for the registration of electors for said election and for the holding of said election.

BE IT FURTHER RESOLVED that the question shall appear on the ballot as follows:

"CITY OF GRAND RAPIDS CHARTER AMENDMENT TO PROVIDE THAT THE CITY COMMISSION SHALL DISTRICT AND APPORTION THE CITY'S THREE WARDS ON AN EQUAL POPULATION BASIS WITHIN ONE (1) YEAR AND THEREAFTER WITHIN ONE (1) YEAR AFTER THE FEDERAL CENSUS OF THE CITY IS AVAILABLE.

"THE PURPOSE OF THIS AMENDMENT IS TO AUTHORIZE AND REQUIRE THE CITY COMMISSION TO DISTRICT AND APPORTION THE THREE WARDS OF THE CITY SO THE POPULATION OF SUCH WARDS SHALL BE AS NEARLY EQUAL AS POSSIBLE.

"SHALL SECTION 3 OF TITLE I OF THE CHARTER BE AMENDED AS ABOVE PROVIDED?

YES ( )
NO ( )

• • •

Adopted.

Yeas: Coms. Anderson, Barto, McCobb, Sevensma, Sypniewski, Worst, The Mayor—7. Nays—0.

• • •

On motion of Com. Sevensma, Commission adjourned at 2:46 p.m.

R. STANTON KILPATRICK
City Clerk

APPENDIX E

PROCEEDINGS OF THE CITY COMMISSION CITY OF GRAND RAPIDS, MICH.

OFFICIAL

Regular Session, Tuesday Evening
March 1, 1966

• • •

REPORT OF THE BOARD OF CANVASSERS

The Board of Canvassers appointed to tabulate and canvass the statement of votes returned by the Board of Election Inspectors of the several Wards and Precincts thereof of the City of Grand Rapids, Michigan, for the Municipal and School District Primary and Special Election held in said City, February 21, 1966, respectfully report that we have made a careful canvass of such statements with the following results:

• • •

PROPOSAL NO. 1

CITY OF GRAND RAPIDS CHARTER AMENDMENT TO PROVIDE THAT THE CITY COMMISSION SHALL DISTRICT AND APPORTION THE CITY'S THREE WARDS ON AN EQUAL POPULATION BASIS WITHIN ONE (1) YEAR AND THEREAFTER WITHIN ONE (1) YEAR AFTER THE FEDERAL CENSUS OF THE CITY IS AVAILABLE.

The purpose of this amendment is to authorize and require the City Commission to district and apportion the three wards of the City so the population of such wards shall be as nearly equal as possible.

Shall Section 3 of Title I of the Charter be amended as above provided?

Yes received	12,877
No received	5,176

Whereupon we certify that "Yes" having received a majority of the votes cast on said Proposal, the same is declared to have carried.

* * *

On motion of Com. Sevensma, Commission adjourned at 8:10 p.m.

R. STANTON KILPATRICK
City Clerk

LIBRARY
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 430

JAMES SANDERS, ET AL., APPELLANTS,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL., APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

REPLY OF APPELLEE KENTWOOD PUBLIC SCHOOLS TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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CASES CITED

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STATUTES CITED

Michigan Statutes Annotated	
Section 15.3295(1)	4
Section 15.3307(1), et seq	5

IN THE SUPREME COURT OF THE UNITED STATES

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On Appeal from the United States District Court for the Western District of Michigan, Southern Division

---

REPLY OF APPELLEE KENTWOOD PUBLIC SCHOOLS TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

The Solicitor General in his Brief for the United States as amicus curiae has great difficulty in applying *Reynolds* to the specialized and unique facts in the instant case [No. 430]. The argument is contained on pages 94 through 101 of the brief and concludes [page 100]:

> "We stress that, should the Court entertain doubts as to the proper disposition of this case because of the peculiar characteristics of the two-step election system, such doubts would have no relevance to the basic question of whether *Reynolds* is generally to be applied to the election of school boards, most of which, across the country, are elected directly by the people.

> That question is a pressing and important one, and we urge that that much at least be laid to rest."

The Solicitor General concedes that members of Michigan county [intermediate] boards of education "are not elected from districts" and "consequently, there can be no attack on the apportionment of the Board itself" [page 96]. He considers that the constitutional objection "is focused specifically on the apportionment of the assembly which elects the Board" [page 96].

We should consider the nature of the assembly which elects the Board.

The Solicitor General assumes [undoubtedly from the Transcript of Record] that the Grand Rapids School District comprises "over 55 per cent of the county's total population" [Footnote 100, page 98].

Footnote 9 on page 5 of the Brief for James Sailors, et al [appellants] states:

> "The 1960 population figures show that 55.6% of the county's population resided within the School District of the City of Grand Rapids while an extension of the 1963 0-19 school census count would indicate that the total had dropped to 48% by 1963 [R. 133, 165]."

The Solicitor General also assumes that the assembly "is composed of one representative from each of the 39 boards of education for the various local school districts within the county" [page 96]. See appellants' brief, page 5.

As of September 1, 1966, there were only 21 constituent school districts in the Kent Intermediate School District. See Brief for Appellee Kentwood Public Schools, page 21. The 1966 school census of children 0-19 [taken in May of each year] shows a total in the intermediate school district of 164,128, of which 74,375 were in the Grand Rapids

School District and 89,753 in the 20 other districts. The 1966 state equalized valuation of the intermediate school district totalled $1,279,664,829 of which valuation the city school district had $631,429,341 and the 20 other districts $648,235,488. Attached as Appendix A is the affidavit of the superintendent of the Kent Intermediate School District.

Appendix A should be compared with the 1963 and 1964 school census figures contained on page 165 of the Transcript of Record.

The current result is that the 20 school districts on the periphery and outside of the Grand Rapids school district have concededly more than 50% of the population of the Kent Intermediate School District; 15,378 more children or 54.68% and more than 50% [50.66%] of the state equalized valuation.

There is no merit whatever to any thought in this case that a rural minority is controlling the destiny of 164,128 children. As a matter of fact, for many years the assembly has seen to it that a member of the Grand Rapids board was also a member of the county board. Mary Keeler, who was both a member of the board of education of appellant, and a member of the board of education of appellee, and cast the one vote against the transfer in the case at bar [Brief for Appellee Kentwood Public Schools, pages 18 and 19] is still a member of both boards.

The Solicitor General states [page 98]:

> "It is not contended that the residents of Kent County have an 'absolute' or constitutional right to elect a County School Board. Nor is it suggested there can never be a two-step election scheme, wherein the voters elect an assembly which in turn selects the members of the governing body, to which the equal population principle is inapplicable. But once it is determined that the body is to be a representa-

tive one, and that its membership is to be determined, directly or indirectly, through an election system, the system devised must be one which treats each member of the electorate equally."

It is true that the selection assembly consists of one school board member from each of the 21 constituent school districts.

Any school tax elector [as distinguished from a general elector, see Brief for Appellee Kentwood Public Schools at page 7] in a constituent school district is eligible to election or appointment to membership on a county school board. A member of the county school board may also be a member of the board of a constituent school district. However, by a 1965 amendment, if a person occupies both offices, he is ineligible to participate in proceedings for the detachment of territory from or attachment of territory to the school district of which he is a board member [§ 295a of the School Code of 1955, as amended; CL 1948, § 340.295a; MSA §15.3295(1)]. Se Appendix B for the full text as to eligibility for membership.

The constitutions and statutes of the several states have sought to remove "politics" from education. We are proud that Michigan, which established the first primary school system while still a Territory, has been a pioneer in this endeavor, and has succeeded very well. Schools in Michigan have never been a part of local self government. *Belles v Burr*, 76 Mich 1, 43 NW 24. See Brief of Appellee Kentwood Public Schools, pages 7-10.

The 9 members of the Grand Rapids Board of Education receive no salary whatever. Although the statutes permit board members of school districts of the third and fourth class to receive some compensation, either compensation is refused or is purely nominal.

Persons who seek and become school board members do so because they are interested in education, and not for political preferment. The assembly which selects county board members consists of persons who have demonstrated their interest in education by becoming members of constituent school boards. When the assembly meets every two years for the purpose of selecting one or two members of the county board for six-year terms, they are selecting a person for such membership whom they believe is also dedicated to education and will fairly and honestly participate in performing the statutory powers and duties of the county board, on a countywide basis, for all of the school children in the county, no matter from what particular school district they come.

The Solicitor General suggests that the power to transfer areas from one school district to another is "one of its more sensitive functions" [page 12]. While we consider that the power to transfer is important, we believe that by far the most sensitive function of the Kent County board and other boards throughout the state is the special program for handicapped children, which it administers on a countywide basis, without regard to race, color or creed and certainly without regard to the particular school district from which such children may come. As a matter of fact, the survey conducted by the Michigan State Superintendent of Public Instruction in 1964 indicates that for the preceding 10 years the 83 county boards throughout the state were not too concerned with transfers [R. 136, 190, 191], but that many county school districts had adopted, by referendum, special education programs under the provisions of §§ 307a to 324a of the School Code of 1955, as amended [CL 1948, §340.307a, et seq; MSA 15.3307(1), et seq. See R. 136 and R. 177-188]. Members of county boards who can be trusted to fairly administer such a sensitive

function, surely should be trusted to fairly exercise the power to transfer areas from one school district to another.

On the 35 areas transferred by the Kent County board after the transfer in the instant case, the last one was from Godwin Heights to the Grand Rapids board February 15, 1965 [Brief for Appellee Kentwood Public Schools, page 5, R. 193].

If by statute or court order county board members should be elected at large, it is entirely possible that all members of the Kent County board would come from areas outside of the territorial limits of the Grand Rapids board, because there are more voters there. Also there are more children and there is more valuation. This very well may be one of the reasons why the legislature is slow in making an election at large mandatory, rather than by referendum.

If the Court required the legislature to create districts of equal population for the selection of county board members, the result could be the same, unless there was political gerrymandering to assure that a minority controlled the election.

We are not dealing with a local school board as in *Strickland v Burns*, 256 F Supp 824 [54, 94, 98, 112, 115]. All local boards in Michigan are elected at large.

The Solicitor General agrees with us that *Gray v Sanders*, 372 US 368, 9 L ed 2d 821, 83 S Ct 801, is not parallel with the case at bar when he say [page 97]:

> "In short, *Gray*, in our view, is analogous but not necessarily controlling."

Education has always been one of the paramount concerns of the American people. We believe that such a great

sensitive field of human endeavor should best be left in the hands of those dedicated persons who take time out from their professions, businesses and other activities to sit as members of local boards of education. We believe the method by which the assembly is selected, [to select members of county boards of education in Michigan] is as fair and workable as any system which can be devised by the Court or any court.

THE TRANSFER OF TERRITORY TO KENTWOOD PUBLIC SCHOOLS SHOULD STAND

We have stated before and feel compelled to state again, that because of the relief sought by appellants[1], appellee Kentwood Public Schools has a tax base of more than $6,500,000 and a modern 14-room elementary school building at stake on this appeal.

The Solicitor General considers that the *de facto* question lacks "federal constitutional significance" [Note 96, page 96].

We agree, but in the context of the case at bar we cannot overlook this facet for our client and respectfully request the Court to affirm the transfer.

---

[1]Brief for James Sailors, et al [appellants], page 19:

"Appellants seek the following relief:

* * *

"(2) That the transfer resolution of February 25, 1963 adopted by the appellee, The Board of Education of the County of Kent, be held void and a complete nullity and of no force and effect; * * *."

CONCLUSION

We urge the Court to affirm the order entered below dismissing the complaint, as amended.

In any event, we urge that the unanimous decision of the District Court allowing the transfer to Kentwood Public Schools to stand be affirmed.

April 7, 1967

Respectfully submitted,

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Of Counsel

APPENDIX A

AFFIDAVIT

STATE OF MICHIGAN)
) SS
COUNTY OF KENT)

ROSCOE C. MINER, Superintendent of the Kent Intermediate School District, being first duly sworn, says that:

1. He is the superintendent of the Kent Intermediate Schol District of the State of Michigan;

2. The following tabulation lists the 21 constituent school districts in the Kent Intermediate School District as of September 1, 1966, the classification of each district [MSA § 15.3002], the 1966 state equalized valuation of each district and the 1966 census thereof, as defined by MSA § 15.3944, namely: "all children who are under 20 years of age":

NAME OF DISTRICT	CLASS	SCHOOL CENSUS 0-19	1966 S E V
Ashley	Primary	84	$ 812,515
Byron Center	4th	2,952	14,203,693
Caledonia	4th	3,022	19,932,461
Cedar Springs	4th	2,891	13,789,229
Comstock Park	4th	3,004	12,760,547
East Grand Rapids	3rd	5,629	53,001,766
Forest Hills	3rd	5,333	38,721,602
Godfrey-Lee	4th	2,923	26,662,388
Godwin Heights	3rd	5,623	81,304,086
Grand Rapids	2nd	74,375	631,429,341
Grandville	3rd	7,256	46,570,604

NAME OF DISTRICT	CLASS	SCHOOL CENSUS 0-19	1966 S E V
Grattan Center	4th	363	$ 2,340,351
Kelloggsville	4th	4,509	28,757,333
Kenowa Hills	3rd	5,101	50,820,115
Kent City	4th	1,879	8,770,306
Kentwood	3rd	8,509	52,573,622
Lowell Area	4th	3,745	22,661,005
Northview	3rd	4,892	24,868,897
Rockford	3rd	5,120	32,124,271
Sparta Area	4th	3,948	22,423,832
Wyoming	3rd	12,970	95,136,865
Totals		164,128	$1,279,664,829
Grand Rapids		74,375	631,429,341
20 other districts		89,753	$ 648,235,488

3. The 1966 state equalized valuation of all the above named 21 districts, in the amount of $1,279,664,829, above, is comparable with the 1963 and 1964 state equalized valuations stated in paragraph 21(b) of the stipulation of facts contained in the Transcript of Record in *James Sailors, et al v The Board of Education of the County of Kent, et al,* pending in the Supreme Court of the United States, October Term, 1966, No. 430, at page 133 and the tabulation at page 164.

4. The 1966 school census figures (0-19), above, are comparable with the 1963 and 1964 school census figures contained in the *Sailors* Transcript of Record in the second paragraph of page 133 and the tabulation at page 165.

5. The school census figures contained in my affidavit of March 1, 1967, which is Appendix H on pages 21a-23a of the Brief for Appellee Kentwood Public Schools, filed in said *Sailors* case, are children of the ages 5 through 19.

(s) Roscoe C. Miner

Roscoe C. Miner
Superintendent of Kent Intermediate
School District

Sworn and subscribed before me
this 29th day of March, 1967

(s) Virginia M. Kapla
Notary Public, Kent County, Michigan
My commission expires: 6/30/67

APPENDIX B

Eligibility for Membership on Intermediate School District Boards of Education

340.295a Same; eligibility for membership; vacancies, petition to attach or detach territory, eligibility to vote. [M.S.A. 15.3295(1)]

Sec. 295a. Any school tax elector in a constituent school district shall be eligible to election or appointment to membership on the board of an intermediate school district. Members of boards of education of constituent school districts shall be eligible to election or appointment to membership on the board of an intermediate school district. Any other provision of law to the contrary notwithstanding, where a member of the board of education of a constituent school district who has heretofore been elected or appointed to the office of member of the intermediate board of education, has qualified for that office and continues to occupy that office and exercise the powers and duties thereof and where such member also holds the office of member of the board of education of the constituent school district, either by election, re-election or appointment, has qualified for such office and continues to occupy that office and exercise the powers and duties thereof, the said member is a valid and lawful member of the board of education of the intermediate school district and a valid and lawful member of the board of education of the constituent school district. Any action taken by him as a member of either the board of education of the intermediate school district or as a member of the board of education of the constituent school district is hereby validated. He shall continue to hold both offices until either becomes vacant under law. Where the same person occupies both offices and there is pending a petition before the intermediate board of education to detach territory from or attach territory to the constituent school district of which he is a board member under sections 461 through 467 of this act, he shall be ineligible to participate in such proceedings.

HISTORY: Add. 1962, p. 410, Act 190, Eff. Mar. 28 1963; — Am. 1965, p. 83, Act 52, Imd. Eff. June 16.

APR 14 1967

JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL., APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

OPINION OF THE SUPREME COURT OF MICHIGAN IN THE MATTER OF THE REQUEST OF THE GOVERNOR FOR ADVISORY OPINION ON CONSTITUTIONALITY OF ACT NO. 261 OF THE PUBLIC ACTS OF 1966

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Attorneys for Appellee The Board of Education of the County of Kent and the Individual Appellees as Members Thereof

IN THE SUPREME COURT OF THE UNITED STATES

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On Appeal from the United States District Court for the Western District of Michigan, Southern Division

OPINION OF THE SUPREME COURT OF MICHIGAN IN THE MATTER OF THE REQUEST OF THE GOVERNOR FOR ADVISORY OPINION ON CONSTITUTIONALITY OF ACT NO. 261 OF THE PUBLIC ACTS OF 1966

The Court is advised that on Monday, April 10, 1967, the Supreme Court of Michigan filed an opinion in the Matter of the Request of the Governor for Advisory Opinion on the Constitutionality of Act No. 261 of the Public Acts of 1966 [county board of supervisors reapportionment statute], the full text of which, as certified by the clerk, is attached hereto as Appendix A.

Respectfully submitted,

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Attorneys for Appellee The Board of Education of the County of Kent and the Individual Appellees as Members Thereof

Dated: April 12, 1967.

APPENDIX A

STATE OF MICHIGAN
IN THE SUPREME COURT

In the Matter of the Request of the Governor for Advisory Opinion on the Constitutionality of Act No. 261 of the Public Acts of 1966.

Filed Apr. 10, 1967

BEFORE THE ENTIRE BENCH

SOURIS, J.

Invoking the jurisdiction of this Court pursuant to the provisions of Article III, section 8, Constitution of 1963*, the Governer has requested our opinion whether PA 1966, No 261 violates Article VII, section 7, Constitution of 1963.

Article VII, section 7, reads as follows:

> "A board of supervisors shall be established in each organized county consisting of one member from each organized township and such representation from cities as provided by law." Const 1963, Art VII, § 7.

---

* "Either house of the legislature or the governor may request the opinion of the supreme court on important questions of law upon solemn occasions as to the constitutionality of legislation after it has been enacted into law but before its effective date."

The effective date of PA 1966, No. 261, if valid, was March 10, 1967, upon the expiration of 90 days following adjournment of the 1966 session of the legislature. Art IV, § 27, Const of 1963. The Act provides for the apportionment of county boards of supervisors on the basis of supervisorial districts to be established as equal in population as is possible. It makes no provision for the automatic allocation of one supervisor to each organized township as is provided by Article VII, section 7 of the Constitution.

In *Brouwer v. Kent County Clerk* (1966), 377 Mich 616, Chief Justice Kavanagh and Justices Adams and Smith joined with me in concluding that Article VII, section 7 is invalid, when tested by the requirements of the Equality Clause of the Fourteenth Amendment of the United States Constitution and the counterpart Equality Clauses of our state's Constitution, Article I, sections 1 and 2, because it would require every township to be represented on its board of supervisors by one member and only one regardless of the population of the township. See Parts IV, V, and VI of my opinion in *Brouwer, supra,* 377 Mich 616, 648-661.

Having concluded for the reasons stated in *Brouwer, supra,* that Article VII, section 7 is invalid, it is my opinion, therefore, that that section is no constitutional obstacle to the validity of PA 1966, No 261.

THOMAS M. KAVANAGH

Concurred with SOURIS, J.

KELLY, J.

Justice Souris, as the Justice to whom this case was assigned, has written the first opinion in response to Governor Romney's request, stating that for the reasons he set forth in his previous opinion in *Brouwer v. Kent County Clerk* (1966), 377 Mich 616, Article VII, section 7, of the Michigan Constitution of 1963 is invalid and, therefore, PA 1966, No 261, is valid.

Developments since our April, 1966, *Brouwer* decision cause me to enlarge my brief disagreement expressed to Justice Souris' opinion in that case.

On August 29, 1966, when we granted the Governor's request, we invited the filing of amicus curiae briefs, supplementing those previously submitted in *Brouwer v. Kent County Clerk*, supra, and *Muskegon Prosecuting Attorney, ex rel. Shaub, v. Klevering*, 377 Mich 666.

Pursuant to our invitation, amicus curiae briefs were filed by the Attorney General, by the Michigan State AFL-CIO, by Tom Downs, attorney for amicus curiae State Representative Marvin R. Stempien, by Kent County, and by the Michigan State Association of Supervisors.

Quoting from the Attorney General's brief:

> "Since the United States Supreme Court's decision in *Reynolds v. Sims*, 377 US 533, 84 S Ct 1362, 12 L Ed 2d 506, (1964) and companion cases, a number of courts have passed upon the effect of those decisions on legisltive bodies other than state legislatures and the majority have ruled that the principle of equal representation reaches to local subordinate instrumentalities of the state. * * *
>
> "Act No. 261, Public Acts of 1966 is, in the view of the Attorney General, clearly consistent with the majority of the decisions which have been rendered

on the matter of the apportionment of local legislative bodies.

"If, in the application of the principle of equal representation to county boards as provided by Act No. 261, there be any conflict with Article VII, Section 7 of Michigan's Constitution, then the Attorney General is compelled by virtue of the authorities herein cited and by others previously cited in briefs filed with this Court, to conclude and suggest the necessity of finding Article VII, Section 7 to be violative of the equal protection clauses of the Federal and State Constitutions."

Quoting from the brief of Michigan State AFL-CIO:

"This Court, in *Brouwer v. Kent County Clerk*, 377 Mich 616 (1966) and *Muskegon Prosecuting Attorney v. Klevering*, 377 Mich 666 (1966), essayed the issues herein at length, and we do not propose to repeat those arguments.

"Suffice it to say that if the 'one man, one vote' principles of *Reynolds v. Sims*, 377 US 533 (1964), are applicable to local legislative bodies, as we submit they are, then Michigan Constitution 1963, Art. VII, sec. 7, necessarily falls, and Act No. 261, P.A. of 1966, clearly stands."

Quoting from the brief of the attorney for amicus curiae Stempien:

"Amicus curiae is chairman of the Apportionment Committee of the Michigan House of Representatives. Public Act 261 of 1966 originated in this committee. In preparing the bill, amicus curiae, an attorney, made every effort to follow the spirit, the letter, and the historical thrust of the recent apportionment decisions of the United States Supreme Court. He believes that as chairman of the committee that originated P.A. 261, he is in a unique position to provide the court information for its assistance. • • •

"Admittedly, the United States Supreme Court has not spoken on the specific question of population equality standards for election of boards of supervisors. But can there be any doubt that the court would strike down an attempt to do indirectly what may not be done directly? Amicus curiae contends that even though there is no United States Supreme Court decision directly in point on the make-up of boards of supervisors, the principle is well established that a legislature may not do indirectly what it is forbidden to do directly, and this by itself determines that boards of supervisors may not exercise legislative powers derived from the state legislature, unless such boards are based on the same constitutional requirement of equality of population as is required for the state legislature."

Quoting from the brief of Michigan State Association of Supervisors:

"In the *Brouwer v. Bronkema* and *Knudsen v. Klevering* cases, the court wisely maintained the status quo until such time as the United States Supreme Court decides whether or not the *Reynolds v. Sims* decision extends to county boards of supervisors.

"Citing the language of Justice Adams *In Re Apportionment of Legislature*, 372 Mich 473, 127 NW2d 868, speaking of Justice Souris's interpretation, said: 'It may well reflect the decision the United States Supreme Court will hand down any day now. When that day comes, I will be pleased to join with him. I do not conceive it to be the proper function of this Court to attempt to outrun the Supreme Court of the United States.'"

Kent County summarizes its position under the heading "Conclusion" as follows:

"For our conclusion, we cite what we consider to be the wise counsel of Mr. Justice Black in the *Muskegon* case, supra:

" 'For once there is no need of haste. What is and what has been in Michigan for a century and a half will harm Michigan not at all should we retain jurisdiction and mark time pending such Federal disposition * * *.'

"Act 261 of the Public Acts of 1966 and Sec. 7 of Article VII of the Michigan Constitution cannot stand together. They are mutually antagonistic. The County of Kent does not take the position that the composition of boards of supervisors as spelled out in the Constitution is equitable, in a moral sense, or political wise. The County of Kent does, however, insist and submit that until the Constitution is amended by the people of this State or until the United States Supreme Court holds that the doctrine of *Reynolds v. Sims* applies to governmental bodies below that of the State capitol, it is the duty of this Court to uphold the constitutionality of our Constitution adopted only a short time ago by the people of this State. We do not argue for the status quo; we do not pretend to judge what the Supreme Court of the United States will do in the *Sailors* case [*Sailors v. Board of Education of Kent County*, 254 F Supp 17 (May 2, 1966)], which has now been submitted to it on Jurisdictional Statement; but we do reiterate that whatever changes may be desirable and necessary in the composition of our board of supervisors must be accomplished either by an amendment to our Constitution or by a definitive ruling from the Supreme Court of the United States."

Summarizing, we find that the Attorney General approved the legislative action because the majority of courts have decided to apply the one man-one vote, *Reynolds v. Sims* principle to local units of government, and that the UAW-CIO and Tom Downs (attorney for amicus curiae Stempien) interpret *Reynolds v. Sims* as controlling our decision here.

Justice Souris in his *Brouwer* opinion, supra, does not hold that *Reynolds v. Sims* controls our decision, as is evi-

denced by the following therefrom (pp 638-640, 642):

"As helpful to our task as the Supreme Court's *Reynolds* opinion is in its statement of general principles, there are claimed to be differences between *Reynolds* and this case of Brouwer in the nature of the rights asserted, and not just in degree, which it is claimed preclude our applying the principles of *Reynolds v. Sims*. Thus, while the Supreme Court found a 'constitutionally protected right to vote' for State legislators in section 2 of the Fourteenth Amendment and planted its decision in *Reynolds*, at least in part, upon that protected right, that section's language does not recognize an equivalent Federal right to vote for the legislative officers of a county, or city, or township. Furthermore, *Reynolds* clearly involved a citizen's right at a level of government no one could dispute was required to be representative in character whereas here we are concerned with a subordinate political subdivision of a State the representative character of which is not beyond dispute. In due course we shall examine these asserted differences in determining whether the principles of *Reynolds* properly can be applied to the claims made in this appeal.

"One other preliminary consideration should be stated. Whether the Federal judiciary, concerned as it must be with its delicate relationships to the States, should entertain such claims which relate to the internal operations of State government, we need not decide, for decision of that question does not measure our duty. The claim is made to this State Court and is planted squarely upon the equal protection clause which we are sworn to uphold and apply whenever and however equality is denied by the State.

"Like my Brother O'Hara, *infra*, I do not believe the problem before us is so simple that a judicially valid answer can be given by direct analogy to *Reynolds v. Sims*. As I have tried to make clear immediately above, there are many differences between the apportionment of a State's legislative power in

accordance with equality clause requirements, with which *Reynolds v. Sims* was concerned exclusively, and our task of determining whether the equality clause has any bearing whatever, and if so what, upon the apportionment of a county's legislative power.

"While I agree that the differences are too great to permit reliance upon simple and direct analogy to *Reynolds*, as other courts in the country confronted with this problem have done and as I have attempted to avoid doing, I do not regard it an adequate exercise of the judicial function we were elected to perform simply to sweep the learned circuit judge's opinion aside on the apparent ground that until the United States Supreme Court rules on the issue no State court should consider and decide a legitimate assertion by citizens that their Federal, as well as State, constitutional right to equality has been denied them. * * *

"We have noted in Part II, above, that *Reynolds v. Sims* and the other State legislative apportionment cases contemporaneously decided do not control decision herein."

Attorney Downs in his amicus curiae brief states:

"The Michigan Supreme Court, both the individuals thereof and as an entity, has spent more time and research on the question of apportionment than has any other State Supreme Court. It may very well be that the Michigan court has expanded [sic] more effort on this single issue than all other state courts combined."

This Court's efforts of the past have established that: (1) Those who have tried to have the constitutional issue now being considered declared invalid have failed to obtain a majority vote of this Court; and (2) This Court has agreed with Justice Souris' finding "that *Reynolds v. Sims* and the other State legislative apportionment cases contemporaneously decided do not control decision herein."

Without relying on *Reynolds*, my Brother makes a brilliant effort to convince us that we should hold invalid Article VII, section 7, of our Constitution*, but he does not convince me, especially in view of the presumption of validity and the fact that the provision we are now considering has stood the test of time.

Justice Souris in *Brouwer* calls attention to the history of county governments, as follows (pp 640-641):

> "Counties have existed in Michigan since territorial days and have been recognized in all of our Constitutions as a unit of government important to the people in the exercise of their right of local self-government. Beginning with our first Constitution in 1835 and repeated in our Constitutions of 1850, 1908, and 1963, the people of this State guaranteed themselves this right of local self-government by reserving for each county's citizens the right to elect certain of the officials of the county. Since our 1850 Constitution at least, and probably earlier as a matter of immemorial usage, the power to legislate regarding the local affairs of each county has been reposed in a county board of supervisors. The membership of the boards of supervisors, again since at least 1850, has consisted of one supervisor elected from each organized township and such representation from cities as may be provided by law."

My final observation of occurrences since our *Brouwer* opinion is directed toward the difference between the record of events preceding *Brouwer* and the record before us today. Our *Brouwer* case came to us through regular legal channels where registered voters in the city of Grand Rapids, by

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* "A board of supervisors shall be established in each organized county consisting of one member from each organized township and such representation from cities as provided by law."

complaint, requested the Kent County circuit court to declare void the same constitutional provision. The complainants convinced the trial judge, but failed to convince the majority of this Court. We are now, at the Governor's request, passing judgment on an enactment that is clearly inconsistent wtih an unambiguous provision of the Constitution.

Justice Souris is the only member of this Court who has answered the Governor's request for an opinion, previous to my writing, and I do not presume to forecast the answer of the remaining members of our Court. I do contend, however, that unless a majority of our Court decide to approve this unusual legislative action, then our Court order should clearly declare that the Constitution prevails until further order of this Court.

My answer to the Governor: The constitutional provision is valid and, therefore, PA 1966, No 261, is not.

JOHN R. DETHMERS
EUGENE F. BLACK
MICHAEL D. O'HARA
THOMAS E. BRENNAN
Concurred with KELLY, J.

BLACK, J.

I agree with Justice Kelly that his response to the Governor's request for an advisory opinion should be released at once.

Act 261, *if valid,* has just gone into effect (March 10, 1967). The Court not having responded to the Governor's request thus far, and state-wide administrative action now being under way which depends solely upon the validity of said Act 261, it seems to me that such administrative pro-

ceedings should for the time being be stayed by an advisory opinion warning that said Act 261 hangs presently in delicate legal balance; most certainly until the Supreme Court determines the Sailors (No. 430), Bianchi (No. 491), Moody (No. 624) and Dusch (No. 724) Cases. See 17 L ed 2d at 431 and 17 L ed 2d at 540. These administrative proceedings may in the ultimate turn out to be quite as invalid as we presently find Act 261, not only on account of the constitutional sections considered in the Kent and Muskegon Cases (377 Mich 616 - 673) but also on account of recent suggestion of a Brother Justice that section 2 of the same article (Const 1963, Article VII) may prohibit legislation on the order of said Act 261.

It is time to act and is safe to act in this instance. The reason lies in the non-precedential and non-adjudicatory nature of an advisory opinion issued pursuant to Const. 1963, Article III, §8. Should the United States Supreme Court rule, directly or by necessary implication, that all or any portion of said Article VII is invalid, an advisory opinion denying validity of said Act 261 will amount to no more than would a judicially reversed opinion of an attorney general. On the other hand, should we delay further, costly and wholly unnecessary administrative actions in the respective counties of Michigan, all looking toward execution of said Act 261, will proceed apace. No harm of any moment can result should any deadline fixed by the act expire without required statutory action. The whole matter ultimately and of reasonable surety will be in the hands of Michigan's "one court of justice" should Act 261 survive (see sections 6 through 9 of said Act 261). The judicial process then will superintend the procedures called for by the act with such expedition as may at the time be in order.

As some respected legal minds seem to forget, this is not a judicial proceeding at all. In no sense, even though

an opinion signed by five or more Justices should come to present release, would such an opinion be or become a judicial determination, or a precedent of any kind, or a judgment binding on or enforceable against anyone, *the Court and its membership significantly included.* Mr. Justice Fellows, writing for the Court in Anway v. Grand Rapids Railway Co., 211 Mich 592, 603, 604, set all this straight in his typically direct way:

> "We are mindful of the fact that in seven of the States of the Union (Colorado, Florida, Maine, Massachusetts, New Hampshire, Rhode Island and South Dakota) by the constitutions of those States the legislative or executive departments may request opinions of the Supreme Court on important questions; but we are likewise mindful that such opinions are regarded as expressing the views of the justices and not a judicial determination of the question by the court; and such opinions are not regarded as binding upon the legislature, the executive, or the court itself; indeed, the court does not act as a court in rendering such opinions but as the constitutional advisers of the other departments of the government. Opinion of the Justices, 126 Mass 566; State v. Cleveland, 58 Me 572; Green v. Commonwealth 12 Allen (Mass.) 155, 164."*

Justice Kelly responds to the Governor that "The constitutional provision [to which he refers] is valid and, therefore, PA 1966, No 261, is not." I agree.

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* "Since in an advisory opinion there is no decision, such an opinion of a court does not have *stare decisis* effect." (20 Am Jur 2d Courts, § 189, pp 524, 525, citing in support Re House Resolutions Concerning Street Improv. 15 Colo 598; 26 P 323; Opinion of the Justices, 266 Mass 590, 165 NE 904, 63 ALR 952; Opinion of Justices, 81 NH 566, 129 A 117, 39 ALR 1023).

ADAMS, J.

I dissent, being of the opinion the Court should defer its opinion in this matter until the United States Supreme Court hands down its decisions in the *Sailors* (No. 430), *Suffolk* (No. 491), *Moody* (No. 624) and *Dusch* (No. 724) Cases or until that Court ends its present term, whichever occurs first. See 35 Law Week 3349 (April 4, 1967).

STATE OF MICHIGAN,—ss. **In the Supreme Court**
Clerk's Office

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of an opinion filed April 10, 1967 in said Court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at Lansing, this 11th day of April A. D. 1967.

(SEAL) ***(s) Donald F. Winters***
Clerk.

SUPREME COURT OF THE UNITED STATES

No. 430.—October Term, 1966.

James Sailors et al., Appellants, v. Board of Education of the County of Kent et al.	On Appeal From the United States District Court for the Western District of Michigan.

[May 22, 1967.]

Mr. Justice Douglas delivered the opinion of the Court.

Appellants, qualified and registered electors of Kent County, Michigan, brought this suit in the Federal District Court to enjoin the Board of Education of Kent County from detaching certain schools from the city of Grand Rapids and attaching them to Kent County, to declare the county board to be unconstitutionally constituted, and to enjoin further elections until the electoral system is redesigned. Attack is also made on the adequacy of the statutory standards governing decisions of the county board in light of the requirements of due process. We need not bother with the intricate problems of state law involved in the dispute. For the federal posture of the case is a very limited one. The people of Michigan (qualified school electors) elect the local school boards.[1] No constitutional question is presented as respects those elections. The alleged constitutional questions arise when it comes to the county school board. It is chosen, not by the electors of the county, but by delegates from the local boards. Each board sends a

[1] In Michigan the members of the local school district's board are elected by popular vote of the residents of the district. See Mich. Stat. Ann. § 15.3023 (1959); Mich. Stat. Ann. §§ 15.3027, 15.3055, 15.3056, 15.3107, 15.3148, 15.3188, 15.3511 (Supp. 1965).

delegate to a biennial meeting and those delegates elect a county board of five members, who need not be members of the local boards,[2] from candidates nominated by school electors. It is argued that this system of choosing county board members parallels the county-unit system which we invalidated under the Equal Protection Clause of the Fourteenth Amendment in *Gray* v. *Sanders*, 372 U. S. 368; and violates the principle of "one man-one vote" which we held in that case and in *Reynolds* v. *Sims*, 377 U. S. 533, was constitutionally required in state elections. A vast array of facts is assembled showing alleged inequities in a system which gives one vote to every local school board (irrespective of population, wealth, etc.) in the selection of the county board. A three-judge court was convened, and it held by a divided vote that the method of constitution of the county board did not violate the Fourteenth Amendment. 254 F. Supp. 17. We noted probable jurisdiction, 385 U. S. 966.

We conclude that a three-judge court was properly convened, for unlike the situation in *Moody* v. *Flowers*, *ante*, —, this is a case where the state statute that is challenged[3] applies generally to all Michigan county school boards of the type described.

We start with what we said in *Reynolds* v. *Sims*, *supra*, at 575:

> "Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental

[2] Mich. Stat. Ann. §§ 15.3294 (1), 15.3295 (1) (Supp. 1965). By Mich. Stat. Ann. §§ 15.3294 (2)–15.3294 (6) (Supp. 1965), members of the county board may be chosen at popular elections provided the board submits the matter to a referendum and the people approve. So far as we are advised, no such referendum has been had; and the membership of the county board, here challenged, was constituted by electors chosen by the local boards.

[3] Mich. Stat. Ann. § 15.3294 (1) (Supp. 1965).

> instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in *Hunter* v. *City of Pittsburgh*, 207 U. S. 161, 178, these governmental units are 'created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them,' and the 'number, nature and duration of the powers conferred upon [them] . . . and the territory over which they shall be exercised rests in the absolute discretion of the State.'"

We find no constitutional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, or by some other appointive means rather than by an election. Our cases have, in the main, dealt with elections for United States Senator or Congressman (*Gray* v. *Sanders*, *supra*; *Wesberry* v. *Sanders*, 376 U. S. 1) or for state officers[4] (*Gray* v. *Sanders*, *supra*) or for state legislators. *Reynolds* v. *Sims*, *supra*; *WMCA, Inc.* v. *Lomenzo*, 377 U. S. 633; *Davis* v. *Mann*, 377 U. S. 678; *Roman* v. *Sincock*, 377 U. S. 695; *Lucas* v. *Colorado Gen. Assembly*, 377 U. S. 713; *Marshall* v. *Hare*, 378 U. S. 561.

They were all cases where elections had been provided and cast no light on when a State must provide for the election of local officials.

A State cannot of course manipulate its political subdivisions so as to defeat a federally protected right, as for example, by realigning political subdivisions so as to deny a person his vote because of race.[5] *Gomillion* v. *Light-*

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[4] The offices in *Gray* v. *Sanders* were: U. S. Senator, Governor, Lieutenant Governor, Justice of the Supreme Court, Judge of the Court of Appeals, Secretary of State, Attorney General, Comptroller General, Commissioner of Labor, and Treasurer.

[5] Nor can the restraints imposed by the Constitution on the States be circumvented by local bodies to whom the State delegates authority. *Standard Computing Scale Co.* v. *Farrell*, 249 U. S. 571, 577; *Cooper* v. *Aaron*, 358 U. S. 1, 17.

foot, 364 U. S. 339, 345. Yet as stated in *Anderson* v. *Dunn*, 6 Wheat. 204, 226:

> "The science of government is the most abstruce of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to the exigencies of the state as they arise. It is the science of experiment."

If we assume *arguendo* that where a State provides for an election of a local official or agency, the requirements of *Gray* v. *Sanders* and *Reynolds* v. *Sims* must be met, we are still short of an answer to the present problem and that is whether Michigan may allow its county school boards to be appointed.

When we stated ". . . the State legislatures have constitutional authority to experiment with new techniques" (*Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421, 423), we were talking about the Due Process Clause of the Fourteenth Amendment, as was Mr. Justice Holmes dissenting in *Lochner* v. *New York*, 198 U. S. 45, 75 when he said ". . . a Constitution is not intended to embody . . . the organic relation of the citizen to the State. . . ." But as we indicated in *Gomillion* v. *Lightfoot*, *supra*, it is precisely that same approach that we have taken when it comes to municipal and county arrangements within the framework of a State. Save and unless the state, county, or municipal government runs afoul of a federally protected right, it has vast leeway in the management of its internal affairs.

The Michigan system for selecting members of the county school board is basically appointive rather than elective.* We need not decide at the present time whether

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*The delegates from the local school boards, not the school electors, select the members of the county school board. While the school electors elect the members of the local school boards

a State may constitute a local legislative body through the appointive rather than the elective process. We reserve that question for other cases such as *Board of Supervisors* v. *Bianchi, ante*, p. —, which we have disposed of on jurisdictional grounds. We do not have that question here, as the County Board of Education performs essentially administrative functions;[7] and while they are important, they are not legislative in the classical sense.

Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing

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and the local school boards, in turn, select delegates to attend the meeting at which the county board is selected, the delegates need not cast their votes in accord with the expressed preferences of the school electors. There is not even a formal method by which a delegate can determine the preferences of the people in his district. It is evident, therefore, that the membership of the county board is not determined, directly or indirectly, through an election in which the residents of the county participate. The "electorate" under the Michigan system is composed not of the people of the county, but the delegates from the local school boards.

[7] The authority of the county board includes the appointment of a county school superintendent (Mich. Stat. Ann. § 15.3298 (1)(b) (Supp. 1965)), preparation of an annual budget and levy of taxes (Mich. Stat. Ann. § 15.3298 (1)(c) (Supp. 1965)), distribution of delinquent taxes (Mich. Stat. Ann. § 15.3298 (1)(d) (Supp. 1966)), furnishing consulting or supervisory services to a constituent school district upon request (Mich. Stat. Ann. § 15.3298 (1)(g) (Supp. 1965)), conducting cooperative educational programs on behalf of constituent school districts which request such services (Mich. Stat. Ann. § 15.3298 (1)(i) (Supp. 1965)), and with other intermediate school districts (Mich. Stat. Ann. § 15.3298 (1)(j) (Supp. 1965)), employment of teachers for special educational programs (Mich. Stat. Ann. § 15.3298 (1)(h) (Supp. 1965)), and establishing, at the direction of the Board of Supervisors, a school for children in the juvenile homes (Mich. Stat. Ann. § 15.3298 (1)(k) (Supp. 1965)). One of the board's most sensitive functions, and the one giving rise to this litigation, is the power to transfer areas from one school district to another. Mich. Stat. Ann. § 15.3461 (1959).

urban conditions. We see nothing in the Constitution to prevent experimentation. At least as respects nonlegislative officers, a State can appoint local officials or elect them or combine the elective and appointive systems as was done here. If we assume *arguendo* that where a State provides for an election of a local official or agency—whether administrative, legislative, or judicial—the requirements of *Gray* v. *Sanders* and *Reynolds* v. *Sims* must be met, no question of that character is presented. For while there was an election here for the local school board, no constitutional complaint is raised respecting that election. Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of "one man-one vote" has no relevancy.

Affirmed.

MR. JUSTICE HARLAN and MR. JUSTICE STEWART concur in the result.